

United States
Circuit Court of Appeals

For the Ninth Circuit. 17

HUGO VON SEGERLUND, ALICE VON SEGERLUND, FLORENCE KEE BROWN, JOHN A. FREAR, JOHN S. CROSS, VALERIA C. PAINTER, WILLIAM PIETSCH, D. F. HANLEY, BERTHA NELSON, ALMA C. SWENSON, FREDERICK R. COOK, JOSEPHINE KAISER, BEATRICE RUMMELLE, JOHN J. McFARLANE, ADA S. MACKEY, JAMES P. MACKEY, JR., AMY SIMPSON, ADELAIDE G. STURGIS, MARGARET BELL FITZPATRICK, MABEL P. TRAVIS, ELIZA J. FULTON, MARGARET MINNICK, NELLIE NELSON LEE, IDA SWENSON, BERTHA KENNISTON, S. H. KENNISTON, CAROLINE A. WILDE, MRS. AUGUST DRESCH, HENRY A. KULHA, LEONIA E. KULHA, ALBERT G. LOELIKE, REINHOLDT A. WOLTER, ADELINE B. WOLTER, SILAS WHITCOMB, W. H. BORTON, HENRIETTA BERNITT, VIRGINIA MAGALE COSHOTT, JOSIE C. IDE, by W. H. BORTON, her attorney in fact, and AMBROSIA INVESTORS' COMPANY, INC., a corporation,

Appellants,

vs.

STELLA DYSART, individually and STELLA DYSART, also doing business as the Ambrosia Club and the Mutual Land Owners, Limited,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED
APR 3 - 1943



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HUGO VON SEGERLUND, ALICE VON SEGERLUND, FLORENCE KEE BROWN, JOHN A. FREAR, JOHN S. CROSS, VALERIA C. PAINTER, WILLIAM PIETSCH, D. F. HANLEY, BERTHA NELSON, ALMA C. SWENSON, FREDERICK R. COOK, JOSEPHINE KAISER, BEATRICE RUMMELLE, JOHN J. McFARLANE, ADA S. MACKEY, JAMES P. MACKEY, JR., AMY SIMPSON, ADELAIDE G. STURGIS, MARGARET BELL FITZPATRICK, MABEL P. TRAVIS, ELIZA J. FULTON, MARGARET MINNICK, NELLIE NELSON LEE, IDA SWENSON, BERTHA KENNISTON, S. H. KENNISTON, CAROLINE A. WILDE, MRS. AUGUST DRESCH, HENRY A. KULHA, LEONIA E. KULHA, ALBERT G. LOELIKE, REINHOLDT A. WOLTER, ADELINE B. WOLTER, SILAS WHITCOMB, W. H. BORTON, HENRIETTA BERNITT, VIRGINIA MAGALE COSHOTT, JOSIE C. IDE, by W. H. BORTON, her attorney in fact, and AMBROSIA INVESTORS' COMPANY, INC., a corporation,

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer of Stella Dysart, et al. to Involuntary Petition by Six Creditors.....	54
Answer of Stella Dysart, et al. to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors W. H. Borton, et al.....	68
Answer of Stella Dysart, et al. to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors William Pietsch, et al.....	58
Appeal:	
Certificate of Clerk to Transcript of Record on	154
Cost Bond on.....	150
Designation by Appellee for Additional Contents of Record on, Request and...	234
Designation of Parts of Record to Be Printed, Appellants'	232
Notice of	148

Index	Page
Appeal (Continued):	
Notice to Clerk of the Court of the Names and Addresses of the Persons Entitled to Notice of.....	149
Objection to Printing of Entire Steno- graphic Report, Appellants'.....	236
Order Extending Time Within Which Ap- pellants May File Record on.....	153
Statement of Points on Which Appellants Intend to Rely on.....	229
Bill of Particulars to Make More Certain....	72
Certificate of Clerk to Transcript of Record on Appeal	154
Cost Bond on Appeal.....	150
Designation by Appellants of Parts of Rec- ord to Be Printed.....	232
Designation by Appellee for Additional Con- tents of Record on Appeal, Request and...	234
Exhibits for Petitioning Creditors (for Iden- tification):	
1—Authenticated Copy of the Record in “Mary T. Christensen v. Stella Dysart,” Action No. 5134, McKinley County, New Mexico	76
2—Authenticated Copy of the Record in “E. H. Youngblood v. Stella Dysart,” Action No. 5414, McKinley County, New Mexico	121

Index	Page
Findings, Conclusions and Judgment of Dismissal	144
Involuntary Petition by Creditors, Petition of Creditors to Intervene and Supplemental...10,	37
Involuntary Petition by Six Creditors.....	2
Judgment of Dismissal, Findings, Conclusions and	144
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	148
Notice to the Clerk of the Court of the Names and Addresses of the Persons Entitled to Notice of Appeal.....	149
Order Extending Time Within Which Appellant May File Record on Appeal.....	153
Objections to Printing of Entire Stenographic Report, Appellants'	236
Petition by Six Creditors, Involuntary.....	2
Petition of Creditors to Intervene and Supplementary Involuntary Petition by Creditors.10,	37
Request for Additional Contents of Record on Appeal, Appellee's	234
Statement of Points on Which Appellants Intend to Rely.....	229
Transcript of Proceedings.....	156

NAMES AND ADDRESSES OF ATTORNEYS

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548 S. Spring Street
Los Angeles, California [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
For the Southern District of California
Central Division

No. 38877-M In Bankruptcy

In the Matter of

STELLA DYSART, individually and STELLA
DYSART, also doing business as the AM-
BROSIA CLUB and the MUTUAL LAND
OWNERS, LIMITED,

Alleged Bankrupt.

INVOLUNTARY PETITION BY SIX
CREDITORS

To the Honorable Judges of the District Court of
the United States:

The verified petition filed by Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross, and Valeria C. Painter respectfully represents:

I.

That Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter are residents of the County of Los Angeles, State of California.

II.

That Stella Dysart is an individual, and also doing business as Stella Dysart, also doing business as Ambrosia Club and Mutual Land Owners,

Limited, and has her principal place of business in the City of Los Angeles, County of Los Angeles, State of California; that she has for the greater portion of six months preceding the filing of the Petition had her principal place of business in the City of Los Angeles, County of Los Angeles, State of California and District as aforesaid, and owes debts in excess of One Thousand (\$1,000.00) Dollars, and is a business organization, and is not a municipal, railroad, insurance or banking corporation; that the said Stella Dysart, individually, and Stella Dysart also doing business as Ambrosia Club and the Mutual Land Owners, Limited, is engaged in the business of selling real estate and supposedly oil bearing lands, and also dealing in oil leases, etc. [2]

III.

That petitioners are creditors of alleged bankrupt, having probable claims in the aggregate in excess of Five Hundred (\$500.00) Dollars, and holding no securities therefor.

IV.

That your petitioners, Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter, are creditors of the above named alleged bankrupt, Stella Dysart, individually, and Stella Dysart, doing business as the Ambrosia Club and the Mutual Land Owners, Limited, having provable claims against the said alleged bankrupt amounting to the

sum of Seventeen Hundred twenty five and no/100 (\$1725.00) Dollars.

V.

That the nature and amounts of petitioners' claims are as follows:

That the said Hugo Von Segerlund and Alice Von Segerlund loaned to the said alleged bankrupt, Stella Dysart, the following sums on the respective dates as follows:

April 26, 1939	\$ 50.00
May 23, 1939	\$100.00

which the said alleged bankrupt agreed to immediately repay, but has failed and neglected to do so, and that no part thereof has been paid, though duly demanded.

That the said Alice Von Segerlund loaned to the said Stella Dysart, alleged bankrupt, the following sums on the following dates, to-wit:

September 25, 1937	\$100.00
May 31, 1938	\$100.00
May 24, 1939	\$100.00
September 15, 1939	\$100.00

which said alleged bankrupt agreed to immediately repay, but has failed and neglected to do so, and that no part thereof has been [3] paid, though duly demanded.

That the said Florence Kee Brown delivered cash to the said Stella Dysart in the sum of Five Hundred (\$500.00) Dollars within two years last past; that said Stella Dysart stated and represented that

she would deliver to your petitioner certain documents or papers which would show she had an interest in the Mutual Land Owners, Limited, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land Owners, Limited; that there is now due, owing and unpaid to the said Florence Kee Brown from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, the sum of Five Hundred (\$500.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That your petitioner John A. Frear and his wife Anna B. Frear loaned to the said alleged bankrupt Stella Dysart, the following sums on the respective dates, to-wit:

August 19, 1938	\$ 50.00
September 3, 1938	\$100.00
September 29, 1938	\$150.00

which said alleged bankrupt agreed to immediately repay, but has failed and neglected to do so; that no part thereof has been paid; that the said Anna B. Frear did for valuable consideration on the 22nd day of January 1940, assign her said claim against the said Stella Dysart, alleged bankrupt, to John A. Frear, petitioner herein who is now the owner and holder of said claim; that no part thereof has been paid and that the whole thereof is still due, owing and unpaid to the said John A. Frear.

That your petitioner John S. Cross delivered

cash to the said Stella Dysart in the sum of Two Hundred Fifty (\$250.00) Dollars within two years last past; that the said Stella Dysart stated and [4] represented to your petitioner that she would deliver a deed to your petitioner for one-half acre of land in McKinley County State of New Mexico, the description of which petitioner does not at this time know, but that the said Stella Dysart has failed and neglected to deliver to the said petitioner, said deed, or to return said money to petitioner; that there is now due, owing and unpaid to the said John S. Cross on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of Two Hundred Fifty (\$250.00) Dollars.

That your petitioner Valeria C. Painter delivered cash to the said Stella Dysart in the sum of One Hundred twenty-five (\$125.00) Dollars within two years last past; that the said Stella Dysart stated and represented to your petitioner that she would deliver a deed to your petitioner for one-quarter acre of land in McKinley County, State of New Mexico, the description of which petitioner does not at this time know, but that the said Stella Dysart has failed and neglected to deliver to the said petitioner, said deed, or to return said money to petitioner; that there is now due, owing and unpaid to the said Valeria C. Painter on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred Twenty-five (\$125.00) Dollars.

VI.

That the said alleged bankrupt has committed an act of bankruptcy in that she did, while insolvent and within four months next preceding the filing of the Petition herein, to-wit: on the 5th day of May, 1941, suffered and permitted while so insolvent, a creditor to procure a Writ of Execution, and did levy by virtue of said writ emanating from a lien upon the said alleged bankrupt's property, and by virtue of said lien, a writ of execution was issued as aforesaid and levy made on property belonging to said alleged bankrupt through legal proceedings, and that the Sheriff of [5] McKinley County, State of New Mexico, did on the 9th day of June 1941, levy upon properties and assets belonging to the said Stella Dysart to satisfy a judgment which was prosecuted against the said Stella Dysart by one Mary T. Christensen, upon which there is now due a total of approximately Twelve Hundred eighty-three (\$1283.83) Dollars; that said alleged bankrupt has further permitted a judgment to be taken against her in the approximate sum of Eleven Hundred (\$1100.00) Dollars by one E. H. Youngblood, and that the same is a lien upon all of certain properties described as section 14 Township 14 north Range 10 West, McKinley County, State of New Mexico; that said levy of execution as aforesaid was made on the 9th day of June 1941 and that the Sheriff has given notice of the execution sale to take place on July 7, 1941, and that said alleged bankrupt not having vacated or discharged

such lien within thirty (30) days from date thereof or at least five days before the date set for the said sale or other disposition of said property, and that there is now due, owing and unpaid on the Mary T. Christensen judgment the approximate sum of \$1283.83, together with additional sums incurred as costs therein, the exact amount of which your petitioners do not at this time know; that said alleged bankrupt Stella Dysart has likewise failed and neglected to vacate or discharge the lien by virtue of the E. H. Youngblood judgment, in approximately the sum of \$1100.00, which said judgment is likewise a lien upon the alleged bankrupt's property, and she not having vacated or discharged such lien within thirty (30) days from the date thereof; that said judgments are still unpaid and are liens on the property of the said alleged bankrupt above described; that these petitioners are informed and believe, and therefore aver that the said alleged bankrupt owes in excess of Forty Thousand (\$40,000.00) Dollars, and her assets have an approximate value not to exceed Twenty Thousand (\$20,000.00) Dollars; that your petitioners are [6] informed and believe and therefore aver that other creditors are about to institute attachment proceedings against the alleged bankrupt and her alleged assets, and that in order to avoid a multiplicity of litigation, all of said proceedings should be handled in the within bankruptcy proceedings; that your petitioners aver that the said bankrupt failed and neglected to pay the taxes on her prop-

erty since 1935, and that as a result, said property as above described, was to be sold on December 4, 1939, for delinquent taxes; that your petitioners aver that the said alleged bankrupt admitted that she was unable to pay her taxes on the 29th day of November, 1939, in the sum of Two hundred fifty-seven and 49/100 (257.49) Dollars; that your petitioners herein, and other creditors of the alleged bankrupt paid the taxes on said alleged bankrupt's property on or about the 29th day of November, 1939, amounting to Two Hundred fifty-seven and 49/100 (\$257.49) Dollars, which the said alleged bankrupt agreed to repay, but that no part has been repaid, notwithstanding demand for same upon said alleged bankrupt; that your petitioners and other creditors have assigned their claim for taxes, for the purpose of collection of said taxes from the said alleged bankrupt, and that an action having been filed in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, entitled "William H. Borton, plaintiff versus Stella Dysart, defendant" action number 580-641 praying for the sum of Seven Hundred forty-three and 47/100 (\$743.47), for the payment of said taxes as aforesaid, and that a writ of execution was issued out of said Municipal Court as aforesaid on or about the 26th day of April, 1941; your petitioners are informed and believe and therefore aver that certain assets of the alleged bankrupt were attached on or about the said 26th day of April 1941. [7]

Wherefore, petitioners pray that the said Stella Dysart, be adjudicated a bankrupt as provided by the United States Bankruptcy law and the Acts of Congress relating to bankruptcy, and that she be adjudged by the Court to be a bankrupt within the purview of said acts, and for such other and further relief as may seem meet and proper to the Court.

HUGO VON SEGERLUND
ALICE VON SEGERLUND
FLORENCE KEE BROWN
JOHN A. FREAR
JOHN S. CROSS
VALERIA C. PAINTER

RUPERT B. TURNBULL,
L.H.P., and

L. H. PHILLIPS

By L. H. PHILLIPS

Attorneys for Petitioning
Creditors.

(Duly verified.)

[Endorsed]: Filed Jul. 5, 1941. [8]

[Title of District Court and Cause.]

PETITION OF CREDITORS TO INTERVENE
AND SUPPLEMENTAL INVOLUNTARY
PETITION BY CREDITORS.

To the Honorable Judges of the District Court of
the United States:

The verified petition of William Pietsch, D. F.
Hanley, Bertha Nelson, Alma C. Swenson, Freder-

ick R. Cook, Josephine Kaiser, Beatrice Rummelle, John J. McFarlane, Ada S. Mackey, James F. Makey, Jr., Amy Simpson, Adelaide G. Sturgis, Margaret Bell Fitzpatrick, Mabel P. Travis, Eliza J. Fulton, Margaret Minnick, Nellie Nelson Lee, Ida Swenson, Bertha Kenniston, S. H. Kenniston, Caroline A. Wilde, Mrs. August Dresch, Henry A. Kulha, Leonia E. Kulha, husband and wife, Albert G. Loellke, Reinholdt A. Wolter and Adeline R. Wolter, husband and wife, and Silas Whitcomb, respectfully alleges and shows:

I.

That William Pietsch, D. F. Hanley, Bertha Nelson, Alma C. Swenson, Frederick R. Cook, Josephine Kaiser, Beatrice Rummelle, John J. McFarlane, Ada S. Mackey, James F. Mackey, Jr., Amy Simpson, Adelaide G. Sturgis, Margaret Bell Fitzpatrick, Mabel P. Travis, Eliza J. Fulton, Margaret Minnick, Nellie Nelson Lee, Ida Swenson, Bertha Kenniston, S. H. Kenniston, Caroline A. Wilde, Mrs. August Dresch, Henry A. Kulha, Leonia E. Kulha, husband and wife, Albert G. Loellke, Reinholdt A. Wolter and Adeline R. Wolter, husband and wife, and Silas Whitcomb are residents of the County of Los Angeles, State of California, and are all creditors of the above named alleged bankrupt, Stella Dysart, [12] individually and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, and having provable claims against the said alleged bankrupt

amounting to the sum of \$4953.00 in excess of any securities held by them.

II.

That the said Stella Dysart is an individual and also doing business as Stella Dysart, individually, and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, and has her principal place of business in the City of Los Angeles, County of Los Angeles, State of California; that she has for the greater portion of six months preceding the filing of the petition, had her principal place of business and resided at 4111 Trinity Street, in the City of Los Angeles, County of Los Angeles, State of California, and District as aforesaid, and owes debts in excess of One Thousand (\$1,000.00) Dollars, and is a business organization and is not a municipal, railroad, insurance or banking corporation; that the said Stella Dysart, individually, and Stella Dysart also doing business as Ambrosia Club and Mutual Land Owners, Limited, is engaged in the business of selling real estate and supposedly oil bearing land and also dealing in oil leases, etc.

III.

That the petitioners are creditors of the alleged bankrupt, having provable claims in the aggregate in excess of Five Hundred (\$500.00) Dollars and holding no securities therefor.

IV.

That the nature and amounts of petitioners' claims are as follows:

That the said William Pietsch delivered cash to the said Stella Dysart in the sum of One Thousand (\$1,000.00) Dollars, at her special instance and request, within four years last past; that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which [13] would show he had an interest in the Mutual Land Owners, Limited and an interest in the Northern Oil Company, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land Owners, Limited or the Northern Oil Company; that there is now due, owing and unpaid to the said William Pietsch from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Thousand (\$1,000.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said D. F. Hanley delivered cash to the said Stella Dysart in the sum of Five Hundred (\$500.00) Dollars, at her special instance and request, on or about the 24th day of December, 1937; that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents which would show he had an interest in the Mutual Land Owners, Limited, but that the said

Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land Owners, Limited; that there is now due, owing and unpaid to the said D. F. Hanley from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of Five Hundred (\$500.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Bertha Nelson delivered cash to the said Stella Dysart in the sum of Four Hundred Two (\$402.00) Dollars, at her special instance and request, between March 8, 1938 and April 15, 1938, both inclusive; that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers for Four Hundred (\$400.00) Dollars of said sum [14] which would show she had an interest in the Mutual Land Owners, Limited, and Two (\$2.00) Dollars of said sum for recording her said interest, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land Owners, Limited or for recording said document; that there is now due, owing and unpaid to the said Bertha Nelson from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of Four Hundred

Two (\$402.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Alma C. Swenson delivered cash to the said Stella Dysart in the sum of Four Hundred Seventy-seven (\$477.00) Dollars, at her special instance and request, on the following dates, to-wit:

March 4, 1938	\$102.00
June 3, 1938	50.00
March 6, 1939	25.00
April 24, 1939	100.00
June 20, 1939	100.00
September 15, 1939	100.00

Of said above sum your petitioner loaned the said Stella Dysart, at her special instance and request, the sum of Three Hundred Two (\$302.00) Dollars, which the said Stella Dysart agreed to repay the same immediately but has failed, neglected and refused, and still fails, neglects and refuses to repay same; that the sum of One Hundred Fifty (\$150.00) Dollars, paid June 3, 1938 and June 20, 1939 the said Stella Dysart stated and represented she would deliver to your petitioner certain documents and papers which would show she had an interest in the Mutual Land Owners, Limited, and an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well she was drilling in [15] the State of Utah, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land

Owners, Limited or the dry ice manufacturing plant or an interest in any oil well; that of the above total sum set forth, your petitioner delivered to the said Stella Dysart Twenty-five (\$25.00) Dollars, at her special instance and request, to pay taxes on three (3) acres of land located in McKinley County, New Mexico, but that the said Stella Dysart has failed and neglected to pay said taxes or to return said money to your petitioner; that there is now due, owing and unpaid to the said Alma C. Swenson from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of Four Hundred Seventy-seven (\$477.00) Dollars, as aforesaid, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Frederick R. Cook delivered cash to the said Stella Dysart in the sum of Two Hundred Ninety-one and 50/100 (\$291.50) Dollars, at her special instance and request, between December 2, 1938 and February 6, 1940, both inclusive, of said sum as aforesaid your petitioner loaned to the said Stella Dysart the sum of Sixty-five (\$65.00) Dollars, which the said Stella Dysart promised she would immediately repay, but has failed and neglected to repay the same; that the said Stella Dysart stated and represented that she would deliver to your petitioner a deed for one-fourth ($\frac{1}{4}$) of an acre of land in McKinley County, State of New Mexico, for One Hundred Twenty-five (\$125.00) Dollars from the moneys delivered to the

said Stella Dysart as aforesaid, and a deed for one-eighth ($\frac{1}{8}$) of an acre of land in said McKinley County, State of New Mexico for Fifty (\$50.00) Dollars from the moneys so paid to Stella Dysart as aforesaid, but that the said Stella Dysart has failed and neglected to deliver deeds [16] for said lands to your petitioner; that the said Stella Dysart further stated and represented that she would deliver to your petitioner for Fifty (\$50.00) Dollars from said moneys paid to said Stella Dysart, as aforesaid, an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, but that the said Stella Dysart has failed and neglected to deliver any interest in said dry ice manufacturing plant or oil well and has not returned said money to your petitioner or delivered any documents or papers showing any interest in said dry ice manufacturing plant and oil well; that the said Stella Dysart further stated and represented that from the moneys delivered by your petitioner as aforesaid to said Stella Dysart, the sum of one and 50/100 (\$1.50) Dollars was to pay the taxes on the land Stella Dysart agreed to deliver deeds for, but that said Stella Dysart has failed and neglected to pay said taxes or to return to your petitioner the sum of \$1.50; that there is now due, owing and unpaid to the said Frederick R. Cook from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of Two Hundred Ninety-one and 50/100 (\$291.50) Dollars, no part

of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Josephine Kaiser delivered cash to the said Stella Dysart in the sum of Four Hundred Ninety (\$490.00) Dollars, at her special instance and request, between March 15, 1938 and November 1, 1939, both inclusive; for Two Hundred Fifty (\$250.00) Dollars delivered as aforesaid to said Stella Dysart the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which would show she had an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, but that the said Stella Dysart has not delivered any documents or [17] papers showing any interest in said dry ice manufacturing plant or oil well to your petitioner and has not returned said money to your petitioner; Forty (\$40.00) Dollars of the above sum as aforesaid, at the special instance and request of the said Stella Dysart, was loaned to her, which she agreed to immediately repay, but has failed and neglected to repay same or any part thereof; Two Hundred (\$200.00) Dollars from said money so delivered to the said Stella Dysart, as aforesaid, the said Stella Dysart stated and represented to your petitioner that she would deliver a deed to one-half ($\frac{1}{2}$) acre of land located in the County of McKinley, State of New Mexico, but that the said Stella Dysart has failed and neglected to deliver a deed to said land or to return said money; that there is now due, owing and unpaid to the said Josephine Kaiser from the said

Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of Four Hundred Ninety (\$490.00) Dollars, no part of which has been paid and that the same thereof is now wholly due, owing and unpaid.

That the said Beatrice Rummelle delivered cash to the said Stella Dysart in the sum of One Hundred Forty (\$140.00) Dollars, at her special instance and request, between June 15, 1938 and January 23, 1939, both inclusive, and that the said Stella Dysart stated and represented that for said sum she would deliver to your petitioner certain documents or papers which would show she had an interest in a certain dry ice manufacturing plant and an interest in an oil well, and also stated and represented that she would deliver deeds to your petitioner for two (2) certain parcels of real property situated in the County of McKinley, State of New Mexico, to-wit, one-eighth ($\frac{1}{8}$) acre and one-half ($\frac{1}{2}$) acre, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in any dry ice manufacturing plant or oil well, or did [18] she deliver any deeds to said land; that there is now due, owing and unpaid to the said Beatrice Rummelle the sum of One Hundred Forty (\$140.00) Dollars on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said John J. McFarlane delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred (\$100.00) Dollars within the last four years past; that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which would show he had an interest in a certain Utah dry ice manufacturing plant and an interest in an oil well, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in the Utah dry ice manufacturing plant or an interest in an oil well; that there is now due, owing and unpaid to the said John J. McFarlane from said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred (\$100.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Ada S. Mackey and James F. Mackey, Jr. delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Five (\$105.00) Dollars between September 21, 1938 and December 23, 1938, both inclusive; that the said Stella Dysart stated and represented that she would deliver to your petitioners deeds to two (2) parcels of real property situate in the County of McKinley, State of New Mexico, to-wit, two (2) one-eighth ($\frac{1}{8}$) acres of land, but that the said Stella Dysart has not deliv-

ered said deeds to your petitioners or returned said money; that there is now due, owing and unpaid to Ada S. Mackey and James F. Mackey, Jr. from the said Stella Dysart [19] on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of One Hundred Five (\$105.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Amy Simpson delivered cash to the said Stella Dysart at her special instance and request in the sum of One Hundred Twenty-seven (\$127.00) Dollars, between September 21, 1938 and January 11, 1939, both inclusive, that the said Stella Dysart stated and represented that she would deliver to your petitioner a deed to one-fourth ($\frac{1}{4}$) acre of land situated in the County of McKinley, State of New Mexico, and likewise stated and represented that she would pay Two (\$2.00) Dollars for the recording of said deed from said sum as aforesaid, but that the said Stella Dysart has not delivered any deed to said property nor paid for the recording of any deed to said property, nor has she returned said money to your petitioner; that there is now due, owing and unpaid to the said Amy Simpson from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of One Hundred Twenty-seven (\$127.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Adelaide G. Sturgis delivered cash to the said Stella Dysart at her special instance and request, in the sum of One Hundred (\$100.00) Dollars on the 13th day of August, 1938; that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which would show that she had an interest in the Mutual Land Owners, Limited, but that the said Stella Dysart has not returned said money to your petitioner or delivered any documents or papers showing any interest in said Mutual Land Owners, Limited; that there is now due, owing and unpaid to the said Adelaide G. Sturgis from [20] the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred (\$100.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Margaret Bell Fitzpatrick delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred (\$100.00) Dollars, on March 15, 1938, and that the said Stella Dysart stated and represented that for said sum she would deliver to your petitioner certain documents or papers which would show she had an interest in a certain Utah dry ice manufacturing plant and an interest in an oil well, but that the said Stella Dysart has not delivered any documents or papers showing any interest in said dry ice manufacturing plant or oil well; that there is now due, owing and unpaid to the said Margaret

Bell Fitzpatrick from said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred (\$100.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Mabel P. Travis delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Twenty-four (\$124.00) Dollars, between January 19, 1938 and April 26, 1939, both inclusive, that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which would show she had an interest in a certain Utah dry ice manufacturing plant and an interest in an oil well, for One Hundred and Twenty-two (\$122.00) Dollars of said sum paid to Stella Dysart as aforesaid, and that Two (\$2.00) Dollars of said amount so paid to Stella Dysart was for tax fund, but that the said Stella Dysart has not delivered any documents or papers showing any interest in the Utah dry ice [21] manufacturing plant or an interest in an oil well, or payment to tax fund, nor has said Stella Dysart returned said money to your petitioner; that there is now due, owing and unpaid to the said Mabel P. Travis from said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred Twenty-four (\$124.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Eliza J. Fulton delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Forty-four and 50/100 (\$144.50) Dollars between May, 1938 and September 7, 1938, both inclusive, that the said Stella Dysart stated and represented that she would deliver to your petitioner certain documents or papers which would show that she had an interest in the Mutual Land Owners, Limited, and an interest in a certain dry ice manufacturing plant in the State of Utah, and an interest in an oil well, but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said Mutual Land Owners, Limited, or said Utah dry ice manufacturing plant or said oil well, and has not returned said money to your petitioner; that there is now due, owing and unpaid to the said Eliza J. Fulton from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of One Hundred Forty-four and 50/100 (\$144.50) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Margaret Minnick delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Two Hundred Twenty-five (\$225.00) Dollars, between January 6, 1938 and December 17, 1938, both inclusive, that the said Stella Dysart stated and represented to your peti-

tioner that she would [22] deliver to her certain documents or papers which would show that she had an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said Utah dry ice manufacturing plant or in said oil well, and has not returned said money to your petitioner; that there is now due, owing and unpaid to the said Margaret Minnick from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her special instance and request, the sum of Two Hundred Twenty-five (\$225.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Nellie Nelson Lee delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Twenty-six (\$26.00) Dollars, between June 7, 1938 and June 20, 1939, both inclusive, that the said Stella Dysart stated and represented to your petitioner that she would deliver to her certain documents or papers which would show that for Twenty-five (\$25.00) Dollars of said sum she had an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, and that One (\$1.00) Dollar of said sum was to pay for tax fund on said interest, but that the said Stella Dysart has failed and neglected to deliver any documents or papers

showing any interest of petitioner in said Utah dry ice manufacturing plant or interest in said oil well, or as payment to tax fund on said interest, and has not returned said money to your petitioner; that there is now due, owing and unpaid to the said Nellie Nelson Lee from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart at her special instance and request, the sum of Twenty-six (\$26.00) Dollars, no part of which has been paid and that the same thereof is wholly due, [23] owing and unpaid.

That the said Ida Swenson delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Fifty (\$150.00) Dollars, between May 4, 1938 and June 3, 1938, both inclusive, that the said Stella Dysart stated and represented to your petitioner that she would deliver to her certain documents or papers which would show an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, but that the said Stella Dysart has failed and neglected to deliver any documents or papers to your petitioner showing that she had an interest in said Utah dry ice manufacturing plant or an interest in said oil well, and has not returned said money to your petitioner; that there is now due, owing and unpaid to the said Ida Swenson from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart, at her special instance and re-

quest, the sum of One Hundred Fifty (\$150.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Bertha Kenniston delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Thirty (\$30.00) Dollars within four years last past; that the said Stella Dysart stated and represented to your petitioner that she would deliver to her certain documents or papers showing an interest in the Mutual Land Owners, Limited and the Northern Oil Company, but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said Mutual Land Owners, Limited or said Northern Oil Company, and has not returned said money to your petitioner; that there is now due, owing and unpaid to the said Bertha Kenniston from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart at her [24] special instance and request, the sum of Thirty (\$30.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said S. H. Kenniston delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Twelve and 50/100 (\$12.50) Dollars within four years last past, that the said Stella Dysart stated and represented to your petitioner that she would deliver to him certain documents or papers which would show that he had

an interest in a certain dry ice manufacturing plant in the State of Utah, and an interest in the Northern Oil Company, but that said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said Utah dry ice manufacturing plant or any interest in the Northern Oil Company, and has not returned said moneys to your petitioner; that there is now due, owing and unpaid to the said S. H. Kenniston from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart at her special instance and request, the sum of Twelve and 50/100 (\$12.50) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Caroline A. Wilde delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Two (\$102.00) Dollars within four years last past, that the said Stella Dysart stated and represented to your petitioner that she would deliver to her certain documents or papers which would show that for One Hundred (\$100.00) Dollars of said sum she had an interest in a certain dry ice manufacturing plant in the State of Utah and an interest in a New Mexico oil well, and that Two (\$2.00) Dollars of said sum was for taxes and interest; but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said Utah dry ice manufacturing plant or an interest in [25] a New

Mexican oil well, and has not returned said moneys to your petitioner; that there is now due, owing and unpaid to the said Caroline A. Wildey from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart at her special instance and request, the sum of One Hundred Two (\$102.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Mrs. August Dresch delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred (\$100.00) Dollars on March 15th, 1938, that the said Stella Dysart stated and represented to your petitioner that she would deliver to her certain documents or papers which would show that she had an interest in a certain dry ice manufacturing company and an interest in an oil well; but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of petitioner in said dry ice manufacturing plant or an interest in any oil well, and has not returned said moneys to your petitioner; that there is now due, owing and unpaid to the said Mrs. August Dresch from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart at her special instance and request, the sum of One Hundred (\$100.00) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Henry A. Kuhla and Leonia E.

Kuhla, husband and wife, delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Thirty-two and 50/100 (\$32.50) Dollars, between November 17, 1938 and July 1, 1939, both inclusive, that the said Stella Dysart stated and represented to your petitioners that for Twenty-five (\$25.00) Dollars of said amount she would deliver to them certain documents or papers which would show that they had an interest in a [26] certain dry ice manufacturing plant in the State of Utah and an interest in an oil well, that One (\$1.00) Dollar of said amount was for tax fund, and from said amount your petitioners loaned the said Stella Dysart Six and 50/100 (\$6.50) Dollars for office fund; but that the said Stella Dysart has failed and neglected to deliver any documents or papers showing any interest of your petitioners in said Utah dry ice manufacturing plant or interest in an oil well, or as payment to tax fund, and has not returned said moneys to your petitioners; that there is now due, owing and unpaid to the said Henry A. Kuhla and Leonia E. Kuhla from the said Stella Dysart on account of said moneys had and received and delivered to said Stella Dysart at her special instance and request, the sum of Thirty-two and 50/100 (\$32.50) Dollars, no part of which has been paid and that the same thereof is wholly due, owing and unpaid.

That the said Albert G. Loellke delivered cash to the said Stella Dysart, at her special instance and request, in the sum of Forty-two (\$42.00) Dol-

lars, within four years last past, that the said Stella Dysart stated and represented that she would deliver to your petitioner a deed to one-eighth ($\frac{1}{8}$) acre of land situated in the County of McKinley, State of New Mexico, for Forty (\$40.00) Dollars of said amount and that she would pay Two (\$2.00) Dollars for the recording of said deed from said sum as aforesaid, but that the said Stella Dystart has not delivered any deed to said property nor paid for the recording of any deed to said property nor has she returned said moneys to your petitioner; that there is now due, owing and unpaid to the said Albert G. Loellke from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of Forty-two (\$42.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid. [27]

That the said Reinholdt A. Wolter and Adeline R. Wolter, husband and wife, delivered cash to the said Stella Dysart, at her special instance and request, in the sum of One Hundred Thirty-two (\$132.00) Dollars, between January 20, 1938 and February 24, 1939, both inclusive, that the said Stella Dysart stated and represented that she would deliver to your petitioners a deed to one-fourth ($\frac{1}{4}$) acre of land situated in the County of McKinley, State of New Mexico, but that the said Stella Dysart has not delivered any deed to said property and has not returned said moneys to your

petitioners; that there is now due, owing and unpaid to the said Reinholdt A. Wolter and Adeline R. Wolter from the said Stella Dysart on account of said moneys had and received and delivered to the said Stella Dysart, at her special instance and request, the sum of One Hundred Thirty-two (\$132.00) Dollars, no part of which has been paid, and that the same thereof is wholly due, owing and unpaid.

That the said Silas Whitcomb loaned to the said alleged bankrupt Stella Dysart, between the 16th day of May, 1939 and the 25th day of July, 1939, both inclusive, the sum of Eighty (\$80.00) Dollars, which she agreed to immediately repay, but has failed and neglected to do so; that no part thereof has been paid although due demand has been made therefor, and that the whole sum thereof is now wholly due owing and unpaid.

V.

That on the 5th day of July, 1941, Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter filed, in the office of the Clerk of this Court, a petition praying that the said Stella Dysart, individually, and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, be adjudged an involuntary bankrupt, which petition is still pending. [28]

VI.

That your petitioners as creditors desire to join in the proceedings herein and allege as follows:

That at all times herein mentioned and during the months of February, March, April, May and June, all of 1941, and during all of said times, the said Stella Dysart was insolvent; that while so insolvent the said Stella Dysart did permit a creditor, to-wit, Mary T. Christensen, to obtain a preference by legal proceedings in this, that Mary T. Christensen was a judgment creditor on the 7th, 8th, 9th days of June, 1941 and during all of the month of June, 1941 to and including the 7th day of July, 1941 that said Mary T. Christensen was a creditor of said Stella Dysart having her indebtedness fixed as to nature, extent and amount, to-wit, a judgment had been duly made, given and rendered in favor of Mary T. Christensen as a plaintiff and against Stella Dysart as a defendant, in the District Court of the State of New Mexico, for the County of McKinley, said judgment being in the sum of approximately Twelve Hundred Eighty-three and 83/100 (\$1283.83) Dollars; that on the 9th day of June, 1941 said Mary T. Christensen, a creditor, did procure and obtain a Writ of Execution upon the judgment aforesaid and placed the same in the hands of the Sheriff of McKinley County, State of New Mexico, and did cause the said Sheriff to levy and the Sheriff did levy upon property of the defendant Stella Dysart, did set the same for sale under said Writ of Execution for the 7th day of July, 1941 and on the 7th day of July, 1941 the said Sheriff of McKinley County, State of New Mexico, did sell to the highest and

best bidder, who was a person other than the said Stella Dysart, the said property of Stella Dysart in payment and in satisfaction of the said judgment in favor of Mary T. Christensen; that Stella Dysart did not within five (5) days prior to said sale vacate or cause to be vacated or discharged, and there was not discharged, [29] the lien of the levy of said Writ of Attachment and said property was sold on the date noticed, July 7th, 1941.

VII.

And for separate and second act of bankruptcy your petitioners, and each of them, allege that within four (4) months last past said Stella Dysart permitted a creditor, Mary T. Christensen, to obtain a preference by legal proceedings and said Mary T. Christensen, a creditor, did obtain a preference by legal proceedings in this, that on the 7th day of July, 1941 and while and at a time that Stella Dysart was insolvent and was known to be involvent by both Stella Dysart and Mary T. Christensen, and each of them, Stella Dysart permitted Mary T. Christensen to have, take and dispose of certain personal property consisting of pipe and oil well equipment situate in McKinley County, State of New Mexico, to apply upon the indebtedness then on July 7th, 1941 due from Stella Dysart to Mary T. Christensen, and Mary T. Christensen was then and there, on July 7th, 1941, a creditor, and then and there Mary T. Christensen took and obtained property of Stella Dysart to the value in

excess of One Thousand (\$1,000.00) Dollars, with the permission of said Stella Dysart, and then and there obtained a greater proportion of payment of her, Mary T. Christensen's, claim than did your petitioners; that then and there Mary T. Christensen obtained the sum in excess of One Thousand (\$1,000.00) Dollars, and that your petitioners have received no payments on their respective accounts and indebtednesses at all during four (4) months immediately preceding the filing of this petition; that said Mary T. Christensen on July 7th, 1941 had reason to believe and did know that said Stella Dysart was insolvent; that said Stella Dysart was on July 14th, 1941 insolvent, that the said conveyance and taking of the said personal property by Mary T. Christensen was done with the intent on the part of Stella Dysart to permit Mary T. Christensen to [30] obtain a preference, and said Mary T. Christensen did obtain a preference over and above your petitioners and each of them.

Wherefore, your intervening petitioners respectfully pray that they may be permitted to file this their intervening petition; that Stella Dysart be adjudicated a bankrupt within the purview of the Bankruptcy Acts and the amendments thereof, as provided by the United States Bankruptcy law and the Acts of Congress relating thereto; and that your petitioners be allowed to join in the petition of Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter, to-wit, the petition

heretofore filed, and the Court make an Order permitting the intervention and the allowance of the filing of this petition and make its Order with appropriate provisions for the service of the process in respect to this intervention petition.

WILLIAM PIETSCH
D. F. HANLEY
BERTHA NELSON
ALMA C. SWENSON
FREDERICK R. COOK
JOSEPHINE KAISER
BEATRICE RUMMELLE
JOHN J. McFARLANE [31]
ADA S. MACKEY
JAMES F. MACKEY, Jr.
AMY SIMPSON
ADELAIDE G. STURGIS
MARGARET BELL FITZ-
PATRICK
MABEL P. TRAVIS
ELIZA J. FULTON
MARGARET MINNICK
NELLIE NELSON LEE
IDA SWENSON
BERTHA KENNISTON
S. H. KENNISTON
CAROLINE WILDE
MRS. AUGUST DRESCH
HENRY A. KULHA
LEONIA E. KULHA [32]
ALBERT G. LOELLKE

REINHOLDT A. WOLTER

ADELINE R. WOLTER

SILAS G. WHITCOMB

Petitioners

RUPERT B. TURNBULL

L. H. PHILLIPS

Attorneys for Petitioning

Intervening Creditors.

(Duly Verified.)

[Endorsed]: Filed July 29, 1941. [33]

[Title of District Court and Cause.]

No. 38877-M

PETITION OF CREDITORS TO INTERVENE
AND SUPPLEMENTAL INVOLUNTARY
PETITION BY CREDITORS.

To the Honorable Judges of the District Court of
the United States:

The verified petition of W. H. Borton, Henrietta Bernitt, Florence Kee Brown, Silas G. Whitcomb, Ida Swenson, Virginia Magale Coshott, John Frear, Josie C. Ide, by W. H. Borton, her attorney in fact, Mrs. A. Von Segerlund, H. A. Kulha, Alma Swenson and Ambrosia Investors' Company, Inc., a corporation, respectfully alleges and shows:

I.

That W. H. Borton, Henrietta Bernitt, Florence Kee Brown, Silas G. Whitcomb, Ida Swenson, Vir-

ginia Magale Coshott, John Frear, Josie C. Ide, Mrs. A. Von Segerlund, H. A. Kulha, Alma Swenson are all residents of the County of Los Angeles, State of California, and Ambrosia Investors' Company, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of California, and are all creditors of the above named alleged bankrupt, Stella Dysart individually and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, and have provable claims against the said alleged bankrupt amounting to the sum of \$683.77 in excess of any securities held by them.

II.

That the said Stella Dysart is an individual and also doing business as Stella Dysart, individually, and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, and has [48] her principal place of business in the City of Los Angeles, County of Los Angeles, State of California; that she has for the greater portion of six months preceding the filing of the petition, had her principal place of business and resided at 4111 Trinity Street, in the City of Los Angeles, County of Los Angeles, State of California, and District as aforesaid, and owes debts in excess of One Thousand (\$1,000.00) Dollars, and is a business organization and is not a municipal, railroad, insurance or banking corporation; that the said Stella

Dysart, individually, and Stella Dysart also doing business as Ambrosia Club and Mutual Land Owners, Limited, is engaged in the business of selling real estate and supposedly oil bearing land and also dealing in oil leases, etc.

III.

That the petitioners are creditors of the alleged bankrupt, having provable claims in the aggregate in excess of Five Hundred (\$500.00) Dollars and holding no securities therefor.

IV.

That the nature and amounts of petitioners' claims are as follows:

That the said W. H. Borton purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Six (\$6.00) Dollars; that the alleged bankrupt collected from the said W. H. Borton the sum of \$6.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said W. H. Borton that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said W. H. Borton paid the same in the sum of \$6.00; that there- [49] after

and in or about the month of November, 1939, the said alleged bankrupt agreed with the said W. H. Borton and did promise to pay said sum to him; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your said petitioner herein.

That the said Henrietta Bernitt purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Eleven and 50/100 (\$11.50) Dollars; that the alleged bankrupt collected from the said Henrietta Bernitt the sum of \$11.50 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Henrietta Bernitt that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Henrietta Bernitt paid the same in the sum of \$11.50; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Henrietta Bernitt and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the pay-

ment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Florence Kee Brown purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the [50] sum of Thirteen (\$13.00) Dollars; that the alleged bankrupt collected from the said Florence Kee Brown the sum of \$13.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Florence Kee Brown that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Florence Kee Brown paid the same in the sum of \$13.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Florence Kee Brown and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Silas G. Whitcomb purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Thirty-five and 75/100 (\$35.75) Dollars; that the alleged bankrupt collected from the said Silas G. Whitcomb the sum of \$35.75 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Silas G. Whitcomb that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Silas G. Whitcomb paid the same in the sum of \$35.75; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Silas G. Whitcomb and did promise to pay said sum to him; that although demand has been made upon said alleged bankrupt for the [51] payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Ida Swenson purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the ap-

purtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Thirty-nine (\$39.00) Dollars; that the alleged bankrupt collected from the said Ida Swenson the sum of \$39.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Ida Swenson that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Ida Swenson paid the same in the sum of \$39.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Ida Swenson and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Virginia Magale Coshott purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of One Hundred Sixty-nine (\$169.00) Dollars; that the alleged bankrupt collected from the said Virginia Magale

Coshott the sum of One Hundred Sixty-nine (\$169.00) Dollars for the purpose [52] of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Virginia Magale Coshott that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Virginia Magale Coshott paid the same in the sum of \$169.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Virginia Magale Coshott and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said John Frear purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of One Hundred (\$100.00) Dollars; that the alleged bankrupt collected from the said John Frear the sum of \$100.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter repre-

sented to the said John Frear that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said John Frear paid the same in the sum of \$100.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said John Frear and did promise to pay said sum to him; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and [53] that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Josie C. Ide purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Thirteen (\$13.00) Dollars; that the alleged bankrupt collected from the said Josie C. Ide the sum of \$13.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Josie C. Ide that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Josie C. Ide paid the

same in the sum of \$13.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Josie C. Ide and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Mrs. A. Von Segerlund purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Forty (\$40.00) Dollars; that the alleged bankrupt collected from the said Mrs. A. Von Segerlund the sum of \$40.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Mrs. A. Von Segerlund that she had paid said taxes, whereas in truth and in fact said taxes were [54] not so paid and remained delinquent; that to save the said real property from being sold to the State of New Mexico for taxes the said Mrs. A. Von Segerlund paid the same in the sum of \$40.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Mrs. A. Von Segerlund and did promise to pay said sum to her; that

although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said H. A. Kulha purchased from the alleged bankrupt an interest in certain real property and lands in McKinley County, New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Seven and 50/100 (\$7.50) Dollars; that the alleged bankrupt collected from the said H. A. Kulha the sum of \$7.50 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said H. A. Kulha that she had paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said H. A. Kulha paid the same in the sum of \$7.50; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said H. A. Kulha and did promise to pay said sum to him; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Alma Swenson purchased from the alleged [55] bankrupt an interest in certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of Sixty-five (\$65.00) Dollars; that the alleged bankrupt collected from the said Alma Swenson the sum of \$65.00 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Alma Swenson that she has paid said taxes, whereas in truth and in fact said taxes were not so paid and remained delinquent; that to save the said real property from being sold to the State of New Mexico for taxes the said Alma Swenson paid the same in the sum of \$65.00; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Alma Swenson and did promise to pay said sum to her; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to paid the same or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

That the said Ambrosia Investors' Company, Inc., a corporation organized and existing under the laws of the State of New Mexico and duly licensed to do business within the State of California, purchased from the alleged bankrupt an interest in

certain real property and lands in McKinley County, State of New Mexico; that the taxes on said property and the appurtenances thereon became delinquent in that there was due, owing and unpaid to the State of New Mexico therefor the sum of One Hundred Eight-four and 02/100 (\$184.02) Dollars; that the alleged bankrupt collected from the said Ambrosia Investors' Company, Inc. the sum of \$184.02 for the purpose of paying the aforesaid taxes and that the said alleged bankrupt thereafter represented to the said Ambrosia Investors' Company, Inc. that she had paid said taxes, whereas in [56] truth and in fact said taxes were not so paid and remained delinquent; that to save said real property from being sold to the State of New Mexico for taxes the said Ambrosia Investors' Company, Inc. paid the same in the sum of \$184.02; that thereafter and in or about the month of November, 1939, the said alleged bankrupt agreed with the said Ambrosia Investors' Company, Inc. and did promise to pay said sum to it; that although demand has been made upon said alleged bankrupt for the payment of said sum she has failed and refused, and still fails and refuses to pay the same, or any part thereof, and that the whole thereof is now due, owing and unpaid from said alleged bankrupt to your petitioner herein.

V.

That on the 5th day of July, 1941, Hugo Von Segerlund, Alice Von Segerlund, Florence Kee

Brown, John A. Frear, John S. Cross and Valeria C. Painter filed, in the office of the Clerk of this Court a petition praying that the said Stella Dysart, individually, and Stella Dysart doing business as Ambrosia Club and Mutual Land Owners, Limited, be adjudged an involuntary bankrupt, which petition is still pending.

VI.

That your petitioners as creditors desire to join in the proceedings herein and allege as follows:

That at all times herein mentioned and during the months of February, March, April, May and June, all of 1941, and during all of said times, the said Stella Dysart was insolvent; that while so insolvent the said Stella Dysart did permit a creditor, to-wit, Mary T. Christensen, to obtain a preference by legal proceedings in this, that Mary T. Christenson was a judgment creditor on the 7th, 8th, 9th days of June, 1941, and during all of the month of June, 1941, to and including the 7th day of July, 1941, that said Mary T. Christensen was a creditor of said Stella [57] Dysart having her indebtedness fixed as to nature, extent and amount, to-wit, a judgment had been duly made, given and rendered in favor of Mary T. Christensen as a plaintiff and against Stella Dysart as a defendant, in the District Court of the State of New Mexico, for the County of McKinley, said judgment being in the sum of approximately Twelve Hundred Eighty-three and 83/100 (\$1283.83) Dollars; that on the

9th day of June, 1941 said Mary T. Christensen, a creditor, did procure and obtain a Writ of Execution upon the judgment aforesaid and placed the same in the hands of the Sheriff of McKinley County, State of New Mexico, and did cause the said Sheriff to levy and the Sheriff did levy upon property of the defendant Stella Dysart, did set the same for sale under said Writ of Execution for the 7th day of July, 1941 and on the 7th day of July, 1941 the said Sheriff of McKinley County, State of New Mexico, did sell to the highest and best bidder, who was a person other than the said Stella Dysart, the said property of Stella Dysart in payment and in satisfaction of the said judgment in favor of Mary T. Christensen; that Stella Dysart did not within five (5) days prior to said sale vacate or cause to be vacated or discharged, and there was not discharged the lien of the levy of said Writ of Attachment and said property was sold on the date noticed, July 7th, 1941.

VII.

And for separate and second act of bankruptcy your petitioners, and each of them, allege that within four (4) months last past said Stella Dysart permitted a creditor, Mary T. Christensen, to obtain a preference by legal proceedings and said Mary T. Christensen, a creditor, did obtain a preference by legal proceedings in this, that on the 7th day of July, 1941, and while and at a time

that Stella Dysart was insolvent and was known to be insolvent by both Stella Dysart and Mary T. Christensen, and each of them, Stella Dysart permitted Mary T. Christensen to have, take [58] and dispose of certain personal property consisting of pipe and oil well equipment situate in McKinley County, State of New Mexico, to apply upon the indebtedness then, on July 7th, 1941, due from Stella Dysart to Mary T. Christensen, and Mary T. Christensen was then and there, on July 7th, 1941 a creditor, and then and there Mary T. Christensen took and obtained property of Stella Dysart to the value in excess of One Thousand (\$1,000.00) Dollars, with the permission of said Stella Dysart, and then and there obtained a greater proportion of payment of her, Mary T. Christensen's, claim that did you petitioners; that then and there Mary T. Christensen obtained the sum in excess of One Thousand (\$1,000.00) Dollars, and that your petitioners have received no payments on their respective accounts and indebtednesses at all during four (4) months immediately preceding the filing of this petition; that said Mary T. Christensen on July 7th, 1941 had reason to believe and did know that said Stella Dysart was insolvent; that said Stella Dysart was on July 14th, 1941 insolvent, that the said conveyance and taking of the said personal property by Mary T. Christensen was done with the intent on the part of Stella Dysart to permit Mary T. Christensen to obtain a preference, and said Mary T. Christen-

sen did obtain a preference over and above your petitioners and each of them.

Wherefore, your intervening petitioners respectfully pray that they may be permitted to file this their intervening petition; that Stella Dysart be adjudicated a bankrupt within the purview of the Bankruptcy Acts and the amendments thereof, as provided by the United States Bankruptcy Law and the Acts of Congress relating thereto; and that your petitioners be allowed to join in the petition of Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter, to-wit, the petition heretofore filed, and the Court make an Order permitting [59] the intervention and the allowance of the filing of this petition, and make its Order with appropriate provisions for the service of the process in respect to this intervention petition.

W. H. BORTON

HENRIETTA BERNITT

FLORENCE KEE BROWN

SILAS G. WHITCOMB

IDA SWENSON

VIRGINIA MAGALE

COSHOTT

JOHN FREAR

W. H. BORTON,

Attorney in Fact for Josie C.

Ide

MRS. A. VON SEGERLUND

H. A. KULHA

ALMA SWENSON

AMBROSIA INVESTORS'
COMPANY, INC., A New
Mexico Corporation

By W. A. NELSON,
Vice-President.

RUPERT B. TURNBULL

L. H. PHILLIPS

Attorneys for Petitioning
Intervening Creditors.
(Duly verified.)

[Endorsed]: Filed Oct. 17, 1941. [60]

[Title of District Court and Cause.]

ANSWER OF STELLA DYSART, ET AL., TO
INVOLUNTARY PETITION BY SIX
CREDIORS.

Comes now Stella Dysart, individually and on behalf of Ambrosia Club, hereinafter referred to as Club, and also Mutual Land Owners, Ltd., a co-partnership, hereinafter referred to as Ltd. co-partnership, the above named alleged bankrupt, and answering the Involuntary Petition by Six Creditors in bankruptcy heretofore filed against said alleged bankrupt by Hugo Von Segerlund and others, hereinafter referred to as petition, admits, denies and alleges as follows to-wit:

I.

Denies generally and specifically each and every allegation contained in paragraph II of said peti-

tion except that said alleged bankrupt admits that she is an individual, and that she has resided in the City of Los Angeles, County of Los Angeles, State of California the greater portion of six months preceding the filing of said petition.

II.

Denies generally and specifically each and every allegation contained in paragraphs III and IV of said petition. [67]

III.

Denies generally and specifically each and every allegation contained in paragraph V to page 3 line 1 thereof.

Denies generally and specifically each and every allegation contained in said paragraph V commencing on page 3 line 2 to line 15 thereof except that the sum of \$500.00 was paid to and received by January 26, 1939 on account of said Ltd., co-partnership and that said Florence Kee Brown now retains her interest in the sum of \$500.00 in said Ltd. co-partnership.

Denies generally and specifically each and every allegation contained in said paragraph V commencing on page 3 line 16 through line 29 thereof.

Denies generally and specifically each and every allegation contained in said paragraph V commencing on page 3 line 30 through page 4 line 9 thereof except that the sum of \$250.00 was received by February 6, 1939 as the sale price of said land and that deed thereto was issued or will be caused to be issued to said John S. Cross and delivered to him.

Denies generally and specifically each and every allegation contained in said paragraph V commencing on page 4 line 10 through line 22 thereof except that the sum of \$125.00 was received by February 6, 1939 as the sale price of said land and that deed thereto was issued or will be caused to be issued to said Valeria C. Painter and delivered to her.

Further answering the allegations of paragraph V of said petition in addition to the other denials and allegations herein made said alleged bankrupt alleges that the alleged claims of said petitioners Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross and Valeria C. Painter set forth therein, if any, each is and all are barred by the provisions of Section 339, Subdivision 1 of the Code of Civil Procedure of the State of California and in this respect and by way of further [68] answer to said claims, if any, said alleged bankrupt alleges that each and all said claims of said creditors, if any, are not fixed as to liability and liquidated as to amount as is required by the provisions of the acts of Congress relating to bankruptcy.

IV.

Answering the allegations of paragraph VI of said petition said alleged bankrupt admits the entering of the judgments alleged in said paragraph but denies that said judgments ever became a lien upon any property of said alleged bankrupt or that said alleged bankrupt was insolvent at the time al-

leged in said involuntary petition or at any other time and other than the admission herein contained denies generally and specifically each and every other allegations contained in said paragraph.

Wherefore, said alleged bankrupt prays:

1. That said petitioners take nothing by their said petition, together with
2. That said alleged bankrupt be hence dismissed, together with
3. That a judgment be entered herein denying an adjudication, together with
4. That said alleged petitioners and creditors in said involuntary petition be taxed with costs incurred by said alleged bankrupt, together with
5. Such additional and other relief as may appear just.

Dated: July 16, 1942.

STELLA DYSART,

Alleged Bankrupt on behalf of Herself and Ambrosia Club and Mutual Land Owners, Ltd., a co-partnership.

S. BERNARD WAGER,

Attorney for Alleged Bankrupt. [69]

State of California,
County of Los Angeles—ss.

Stella Dysart, on behalf of herself and Ambrosia Club and also Mutual Land Owners, Ltd., a co-partnership, being by me first duly sworn deposes and says: That she is the Alleged Bankrupt in the above entitled matter, that she has read the forego-

ing Answer of Stella Dysart, et al., to Involuntary Petition by Six Creditors and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that she believes it to be true.

STELLA DYSART.

Subscribed and sworn to before me this 16 day of July, 1942.

[Seal]

S. BERNARD WAGER,

Notary Public in and for said
County and State.

Received copy of the within Answer of Stella Dysart etc. this 17 day of July, 1942.

RUPERT B. TURNBULL and
LEWIS H. PHILLIPS,

By L. H. PHILLIPS,

Attorneys for Pet. Creditors.

[Endorsed]: Filed Jul 20, 1942. [70]

[Title of District Court and Cause.]

ANSWER OF STELLA DYSART, et al., TO PETITION OF CREDITORS TO INTERVENE AND SUPPLEMENTAL INVOLUNTARY PETITION BY CREDITORS WILLIAM PIETSCH, et al.

Comes now Stella Dysart, individually and on behalf of Ambrosia Club, hereinafter referred to

as Club, and also Mutual Land Owners, Ltd., a co-partnership, hereinafter referred to as Ltd. co-partnership, the above named alleged bankrupt and answering the said petition of creditors to intervene and supplemental involuntary petition by creditors in bankruptcy heretofore filed against said alleged bankrupt by William Pietsch and others, hereinafter referred to as petition, admits, denies and alleges as follows to-wit:

I.

Denies generally and specifically each and every allegation contained in paragraph I of said petition commencing with page 1 line 31 through page 2 line 4 thereof.

II.

Denies generally and specifically each and every allegation contained in paragraph II of said petition except that said alleged bankrupt admits that she is an individual, that she has resided in the City of Los Angeles, County of Los Angeles, State of [71] California the greater portion of six months preceding the filing of said petition.

III.

Denies generally and specifically each and every allegation contained in paragraph III of said petition.

IV.

Denies generally and specifically each and every allegation contained in paragraph IV of said pe-

tition commencing with page 2 line 27 through page 17 line 24 thereof except as follows:

Admits that the sum of \$1000.00 was paid to and received by January 1, 1939 on account of said Ltd. co-partnership and on account of the sale price of land in New Mexico and that said William Pietsch now retains his interest in the sum of \$500.00 in said Ltd. co-partnership and that deed to said land was issued to said William Pietsch and delivered to him.

Admits that the sum of \$500.00 was paid to and received by March 15, 1938 on account of said Ltd. co-partnership and that said D. F. Hanley now retains his interest in said sum in said Ltd. co-partnership.

Admits that the sum of \$402.00 was paid to and received by April 15, 1938 on account of said Ltd. co-partnership and recording fee thereof and that said Bertha Nelson now retains her interest in the sum of \$400.00 in said Ltd. co-partnership.

Admits that the sum of \$477.00 was paid to and received, \$377.00 thereof by June 30, 1939 and \$100.00 thereof by September 15, 1939 \$352.00 thereof on account of said Ltd. co-partnership and expenses thereof and that said Alna C. Swenson now retains her interest in the sum of \$350.00 in said Ltd. co-partnership and the balance \$125.00 was contributed to the defense fund.

Admits that the sum of \$265.00 was paid to and received by February 6, 1940 on account of the sale price \$175.00 of said land and contributions

towards incorporating expenses of said Ltd. co-partnership and to the defense fund of said alleged bankrupt and [72] that said Frederick R. Cook now retains his interest in the sum of \$50.00 in said Ltd. co-partnership and that deed to said land was issued or will be caused to be issued to said Frederick R. Cook and delivered to him.

Admits that the sum of \$490.00 was paid to and received by November 1, 1939 on account said Ltd. co-partnership in the sum of \$250.00 and on account of the sale price \$200.00 of said land and contribution \$40.00 to the defense fund of said alleged bankrupt and that said Josephine Kaiser now retains her interest in the sum of \$250.00 in said Ltd. co-partnership and that deed to said land was not issued by reason of court restraining order and that when permitted to said deed will be caused to be issued to her.

Admits that the sum of \$215.00 was paid to and received by January 23, 1939 on account \$125.00 in said Ltd. co-partnership and incorporating expenses thereof and \$190.00 the sale price of said land and that said Beatrice Rummelle now retains her interest \$100.00 in said Ltd. co-partnership and that upon completion of payment of balance due on the sale price of said land that if court permits deed thereto will be caused to be issued to said Beatrice Rummelle and delivered to her.

Admits that the sum of \$100.00 was paid to and received by March 28, 1938 on account of said Ltd. co-partnership and that said John J. McFarlane

now retains his interest in said sum in said Ltd. co-partnership.

Admits that the sum of \$80.00 was paid to and received by December 23, 1938 on account \$100.00 of the sale price of said land and that on completion of payment of balance due on said sale price of said land that if court permits deed thereto will be caused to be issued to said Ada Mackey and James F. Mackey Jr. and delivered to them.

Admits that the sum of \$127.00 was paid to and received [73] by January 11, 1939 on account of the sale price of said land and that deed thereto has been issued and is now in the possession of the District Attorney of Los Angeles County for the account of said Amy Simpson.

Admits that the sum of \$100.00 was paid to and received by August 13, 1938 on account of said Ltd. co-partnership and incorporating expense thereof and that said Adelaide G. Sturgis now retains her interest in said sum in said Ltd. co-partnership.

Admits that the sum of \$100.00 was paid to and received by March 15, 1938 on account of said Ltd. co-partnership and that said Margaret Bell Fitzpatrick now retains her interest in said sum in said Ltd. co-partnership.

Admits that the sum of \$102.00 was paid to and received by September 1, 1938 on account \$100.00 of said Ltd. co-partnership and \$2.00 recording fee and that said Mabel P. Travis now retains her interest in the sum \$100.00 in said Ltd. co-partnership.

Admits that the sum of \$127.00 was paid to and received by September 7, 1938 on account of sale price \$125.00 of New Mexico land and recording fee and that deed to said Eliza J. Fulton was recorded on December 7, 1938.

Admits that the sum of \$225.00 was paid to and received by September 19, 1938 \$200.00 thereof on account of said Ltd. co-partnership and \$25.00 defense fund and that said Margaret Minnick now retains her interest in the sum of \$200.00 in said Ltd. co-partnership.

Admits that the sum of \$26.00 was paid to and received by June 20, 1939 \$25.00 thereof on account of Mutual Land Owners, Inc. incorporating expenses thereof and \$1.00 tax fund and that said Nellie Nelson Lee now retains her \$25.00 in said proposed corporation.

Admits that the sum of \$152.00 was paid to and received by June 3, 1938 on account of said Ltd. co-partnership and incor- [74] porating expenses thereof and that said Ida Swenson now retains her \$150.00 interest in said Ltd. co-partnership.

Admits that the sum of \$15.00 was paid to and received by December 9, 1938 on account \$50.00 of Mutual Land Owners, Inc. and incorporating expenses thereof and that said Bertha Kenniston now retains her interest in the sum of \$15.00 in said proposed corporation.

Admits that the sum of \$12.50 was paid to and received by December 9, 1938 on account of said Mutual Land Owners, Inc. incorporating expense

thereof and that said S. H. Kenniston now retains his interest in the sum of \$12.50 in said proposed corporation.

Admits that the sum of \$102.00 was paid to and received by March 18, 1938 on account \$100.00 of said Ltd. co-partnership and recording fees thereon and that said Caroline A. Wilde now retains her interest in the sum of \$100.00 in said Ltd. co-partnership.

Admits that the sum of \$100.00 was paid to and received by October 31, 1938 on account of said Ltd. co-partnership and that said Mrs. August Dresch now retains her interest in the sum of \$100.00 in said Ltd. co-partnership.

Admits that the sum of \$54.50 was paid to and received by July 1, 1939 on account \$102.00 of said Ltd. co-partnership and recording fee thereof and \$1.00 for taxes on land owned by said Henry A. Kula and Leonia E. Kula and that said Henry A. Kula and Leonia E. Kula now retain their interest in the sum of \$53.50 in said Ltd. co-partnership.

Admits that the sum of \$42.00 was paid to and received by May 28, 1937 on account of the sale price \$40.00 and deed recording fee \$2.00 of said land and that deed thereto to Albert G. Loellke was recorded on May 28, 1937.

Admits that the sum of \$132.00 was paid to and received [75] by February 24, 1939 on account of the sale price \$250.00 of two parcels of said land and deed recording fee on one said parcel \$2.00, and that deed to one said parcel was issued to Reinholdt

A. Wolter and Adeline R. Wolter and is now in the possession of the District Attorney of Los Angeles County for the account of said Reinholdt A. Wolter and Adeline R. Wolter, husband and wife and that on completion of payment of balance due on said other parcel that if court permits deed thereto will be caused to be issued to said Reinholdt A. Wolter and Adeline R. Wolter.

Admits that the sum of \$80.00 was paid to and received by August 22, 1939 on account of and as a contribution by Silas Whitcomb towards the defense and office fund of said alleged bankrupt.

Further answering the allegations of paragraph IV of said petition of creditors in addition to the other denials and allegations herein made said alleged bankrupt alleges that the alleged claims of said petitioners William Pietsch, et al., if any, each is and all are barred by the provisions of Section 339, Subdivision 1 of the Code of Civil Procedure of the State of California and in this respect and by way of further answer to said claims, if any, said alleged bankrupt alleges that each and all said claims of said creditors, if any, are not fixed as to liability and liquidated as to amount as is required by the provisions of the acts of Congress relating to bankruptcy.

V.

Answering the allegations of paragraph VI and VII of said petition said alleged bankrupt admits the entering of the judgment alleged in said paragraphs but denies that said judgment ever became a lien upon any property of said alleged bankrupt

or that said alleged bankrupt was insolvent at the time alleged in said petition or at any other time and other than the admission herein contained denies generally and specifically each and every other allegations [76] contained in said paragraphs.

Wherefore, said alleged bankrupt prays:

1. That said petitioners take nothing by their said petition, together with
2. That said alleged bankrupt be hence dismissed, together with
3. That a judgment be entered herein denying an adjudication, together with
4. That said alleged petitioners and creditors in said petition be taxed with costs incurred by said alleged bankrupt, together with
5. Such additional and other relief as may appear just.

Dated: July 16, 1942.

STELLA DYSART

Alleged Bankrupt on behalf
of Herself and Ambrosia
Club and Mutual Land
Owners, Ltd., a co-partner-
ship

S. BERNARD WAGER

Attorney for Alleged Bank-
rupt

State of California,
County of Los Angeles—ss.

Stella Dysart, on behalf of herself and Ambrosia Club and also Mutual Land Owners, Ltd., a co-

partnership, being by me first duly sworn deposes and says: That she is the Alleged Bankrupt in the above entitled matter, that she has read the foregoing Answer of Stella Dysart, et al., to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors William Pietsch, et al., and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that she be- [77] lieves it to be true.

STELLA DYSART

Subscribed and sworn to before me this 16th day of July, 1942.

[Seal]

S. BERNARD WAGER

Notary Public in and for said County and State.

Received copy of the within answer of Stella Dysart etc. this 17 day of July 1942.

RUPERT B. TURNBULL and

L. H. PHILLIPS

By L. H. PHILLIPS,

Attorneys for Pet. Creditors.

[Endorsed]: Filed Jul. 20, 1942. [78]

[Title of District Court and Cause.]

ANSWER OF STELLA DYSART, ET AL., TO
PETITION OF CREDITORS TO INTER-
VENE AND SUPPLEMENTAL INVOLUN-
TARY PETITION BY CREDITORS W. H.
BORTON, ET AL.

Comes now Stella Dysart, individually and on behalf of Ambrosia Club and also Mutual Land Owners, Ltd., a co-partnership, the above named bankrupt and answering the said petition of creditors to intervene and supplemental involuntary petition by creditors in bankruptcy heretofore filed against said alleged bankrupt by W. H. Borton and others, hereinafter referred to as petition, admits, denies and alleges as follows to-wit:

I.

Denies generally and specifically each and every allegation contained in paragraph I of said petition commencing with page 1 line 23 through line 27 thereof.

II.

Denies generally and specifically each and every allegation contained in paragraph II of said petition except that said alleged bankrupt admits that she is an individual, that she has resided in the City of Los Angeles, County of Los Angeles, State of California the greater portion of six months preceding the filing of said petition. [79]

III.

Denies generally and specifically each and every

allegation contained in paragraph III of said petition.

IV.

Denies generally and specifically each and every allegation contained in said paragraph IV of said petition commencing with page 2 line 18 through page 10 line 12 thereof except as follows:

Admits that said W. H. Borton, Henrietta Bernit, Florence Kee Brown, Silas G. Whitcomb, Ida Swenson, Virginia Magale Coshot, John Frear, Josie C. Ide, Mrs. A. Von Segerlund, H. A. Kula and Alma Swenson purchased said land more than two years last past prior to the filing of the involuntary petition herein.

Denies that said Ambrosia Investors Company, Inc. purchased said land or any other land from said alleged bankrupt.

Further answering the allegations of paragraph IV of said petition in addition to the other denials and allegations herein made said alleged bankrupt alleges that the alleged claims of said petitioners W. H. Borton, et al., if any, each is and all are barred by the provisions of Section 339, Subdivision 1 of the Code of Civil Procedure of the State of California and in this respect and by way of further answer to said claims, if any, said alleged bankrupt alleges that each and all said claims of said creditors, if any, are not fixed as to liability and liquidated as to amount as is required by the provisions of the acts of Congress relating to bankruptcy.

V.

Answering the allegations of paragraph VI and VII of said petition said alleged bankrupt admits the entering of the judgment alleged in said paragraphs but denies that said judgment ever became a lien upon any property of said alleged bankrupt or that said alleged bankrupt was insolvent at the time alleged in said petition [80] or at any other time and other than the admission herein contained denies generally and specifically each and every other allegation contained in said paragraphs.

Wherefore, said alleged bankrupt prays:

1. That said petitioners take nothing by their said petition, together with
2. That said alleged bankrupt be hence dismissed, together with
3. That a judgment be entered herein denying an adjudication, together with
4. That said alleged petitioners and creditors in said petition be taxed with costs incurred by said alleged bankrupt, together with
5. Such additional and other relief as may appear just.

Dated: July 16, 1942.

STELLA DYSART

Alleged Bankrupt on behalf
of Herself and Ambrosia
Club and Mutual Land
Owners, Ltd., a co-partner-
ship.

S. BERNARD WAGER

Attorney for Alleged Bank-
rupt. [81]

State of California,
County of Los Angeles—ss.

Stella Dysart, on behalf of herself and Ambrosia Club and also Mutual Land Owners, Ltd., a co-partnership, being by me first duly sworn deposes and says: That she is the Alleged Bankrupt in the above entitled matter, that she has read the foregoing Answer of Stella Dysart, et al., to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors W. H. Borton, et al., and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that she believes it to be true.

STELLA DYSART

Subscribed and sworn to before me this 16th day of July, 1942.

[Seal]

S. BERNARD WAGER

Notary Public in and for said County and State.

Received copy of the within Answer of Stella Dysart etc. this 17 day of July, 1942.

RUPERT B. TURNBULL and
L. H. PHILLIPS

By L. H. PHILLIPS,

Attorneys for Pet. Creditors.

[Endorsed]: Filed Jul. 20, 1942. [82]

[Title of District Court and Cause.]

BILL OF PARTICULARS TO MAKE
MORE CERTAIN

Come Now the original petitioning creditors herein and the first intervening creditors filing supplementary involuntary petition, and complying with the suggestion and order of the Honorable Judge Dawkins, sitting herein at the time of the making of the order sustaining alleged bankrupt's motion to make more certain, files this their Bill of Particulars to make more certain, and the information required is hereby supplied as follows:

Petitioner Florence Kee Brown delivered Five Hundred (\$500.00) Dollars to the bankrupt, \$150.00 on the 15th day of January, 1938, \$100.00 on the 4th day of March, 1938, \$250.00 on the 15th day of March, 1938, \$10.00 on the 5th day of January, 1939, \$15.00 on the 26th day of January 1939, and \$25.00 on the 1st day of October, 1938, under the conditions set forth in paragraph V page 3 of the Creditors' Petition.

Petitioner John S. Cross delivered Two Hundred and Fifty (\$250.00) to the alleged bankrupt on the 27th day of February, 1939.

Petitioner Valeria C. Painter delivered One Hundred Twenty-five (\$125.00) Dollars to the alleged bankrupt on the 4th day of February, 1939.

Intervening creditor William Pietsch delivered One Thousand (\$1,000.00) Dollars to the alleged bankrupt on the 27th day of February, 1939.

Petitioner John J. McFarlane delivered One Hundred [83] (\$100.00) to the alleged bankrupt on the 27th day of February, 1939.

Petitioner Bertha Kenniston delivered Thirty (\$30.00) Dollars to the alleged bankrupt on the 27th day of February, 1939.

Petitioner S. H. Kenniston delivered Twelve Dollars Fifty Cents (\$12.50) to the alleged bankrupt on the 27th day of February, 1939.

Petitioner Caroline A. Wilde delivered One Hundred Two (\$102.00) Dollars to the alleged bankrupt on the 14th day of June, 1939.

That the aforesaid petitioners and each of them discovered on or about the 1st day of January 1940, the bankrupt had not given them anything of value and did not intend to convey to them anything of value; that the bankrupt had not created under the laws of the State of Utah, any limited or other partnership, nor any entity under the name of Mutual Land Owners, Limited, or under any name whatsoever, and had filed no certificate as required by the laws of the State of Utah or any portion thereof or any political subdivision thereof; that the bankrupt had heretofore represented and stated to the petitioners that she would create the Mutual Land Owners, Limited, a limited partnership under the laws of the State of Utah; that said representations were made immediately prior to and at the times the aforesaid moneys were paid by the said respective petitioners to the bankrupt; that the said alleged bankrupt at said times represented and

stated to said petitioners and each of them, that said organization known as Mutual Land Owners, Limited, would be completed immediately succeeding the dates of the receipt of said moneys; that your petitioners and each of them relied upon said promises and paid the moneys aforesaid, believing said statements to be true.

That said statements made by said bankrupt are untrue and said statements and promises were made without any intention on [84] the part of the said bankrupt to fulfill them or any portion thereof, and said statements were made as a part and a portion of a general plan and scheme to defraud a group of persons, approximately three hundred (300) in number, approximately two hundred and twenty-five (225) of whom reside and make their home in the County of Los Angeles, State of California, including the petitioners.

That said bankrupt did not perform any act so promised by her to be done and performed, did not form said partnership, limited or otherwise, did not file any certificate of partnership with the County Recorder of Salt Lake County, State of Utah, in any manner or at all.

That at the time of obtaining said moneys from said petitioners and each of them, the said bankrupt stated to the said petitioners and each of them, that she would so file a certificate of the Mutual Land Owners, Limited, in the office of the County Recorder of Salt Lake County, State of Utah.

That your petitioners and each of them did not

discover until January 1st, 1940, the said promises were untrue, and were unfulfilled, and that the said statements had been made without any intention on the part of the said bankrupt to fulfill them, and that said acts promised by the said bankrupt would not be performed.

That said petitioners and each of them did not discover until January 4, 1940 the said fraud perpetrated upon them.

Petitioners allege that there was no consideration for the payments made by them and each of them respectively to the said alleged bankrupt, and that on the 4th day of January, 1940 on discovering said fraud, they and each of them elected to recover the moneys so paid without consideration to the bankrupt.

RUPERT B. TURNBULL and

L. H. PHILLIPS

By L. H. PHILLIPS

Attorneys for petitioning &
intervening creditors

[Endorsed]: Filed Oct. 17, 1941. [85]

PETITIONING CREDITORS' EXHIBIT No. 1
FOR IDENTIFICATION

11/4/42

CERTIFICATE

State of New Mexico
County of McKinley—ss.

I, Eva Ellen Sabin, Clerk of the District Court in and for said County, do hereby certify that I have compared the papers in writing, to which this certificate is attached, with the original Judgment, Executions and Sheriff's Returns as the same appear of record and on file in my said office, at the court house, in said County, and that the same are true and correct copies of said original Judgment, Executions and Sheriff's Returns, and the whole thereof.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at Gallup, McKinley County, New Mexico, this 22nd day of October, 1942.

EVA ELLEN SABIN

Clerk

By B. MARTINEZ

Deputy

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

CERTIFICATE

State of New Mexico
County of Bernalillo—ss.

I, Albert R. Kool, Judge of the Second Judicial District of the State of New Mexico, do hereby certify that Eva Ellen Sabin whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, Clerk of the District Court of McKinley County aforesaid, which County is in the First Judicial District, and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all her official acts as such in all Courts of record and elsewhere; and that her said attestation is in due form, and by the proper officer.

Given under my hand and seal this 26 day of October, 1940, at Albuquerque, Bernalillo County, New Mexico.

ALBERT R. KOOL

District Judge of the Second
Judicial District, sitting in
place and stead of Honor-
able David Chavez, Jr., Dis-
trict Judge. [86]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

CERTIFICATE

State of New Mexico
County of McKinley—ss.

I, Eva Ellen Sabin, Clerk of the District Court in and for said County, in the State aforesaid, do hereby certify that Honorable Albert R. Kool, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same, Judge of the Second Judicial District of the State of New Mexico, sitting for Honorable David Chavez, Jr., Judge of the First Judicial District, of which First Judicial District, the said McKinley County forms a part, duly elected and qualified; that full faith and credit are and of right ought to be given to all his official acts as such, in all Courts of record and elsewhere.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, at my office in Gallup, McKinley County, New Mexico, this 22nd day of October, 1942.

EVA ELLEN SABIN

Clerk

By B. MARTINEZ

Deputy [87]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the County
of McKinley

No. 5134

MARY T. CHRISTENSEN,

Plaintiff,

v.

S. DYSART and NEW MEXICO OIL
PROPERTIES,

Defendants.

JUDGMENT

This case having come on to be tried before the court sitting without a jury at Gallup, New Mexico, on February 22nd and 23rd, 1937, and the plaintiff being present in person and by her attorney Harris K. Lyle, Esq., and the defendant S. Dysart being present in person and by her attorneys M. J. McGuinness, Esq., and M. G. Macneil, Esq., and both parties having offered such evidence oral and documentary as they desired, and the court being fully advised in the premises, finds the following facts:

1. That on April 7, 1936, the defendants herein were and had been for some months prior thereto engaged in the business of drilling oil wells in McKinley County, New Mexico.

2. That on said April 7, 1936, and for some months prior thereto, one Christian Theodore

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

Christensen had been an employee of the defendants, engaged in carpenter work, and that during all of said time the defendants had more than four regular employees.

3. That the business in which the defendants were engaged was an extra-hazardous occupation within the meaning of the New Mexico Workmen's Compensation Act, but notwithstanding such fact, the defendants had not procured a workmen's compensation policy or procured a certificate of solvency excusing them from the giving of such policy.

4. That said Christian Theodore Christensen departed this life in McKinley County, New Mexico, on April 7, 1936, at buildings being constructed by the defendants. [88]

5. That for at least six weeks prior to the death of said Christensen, which occurred on or about April 7, 1936, he had been suffering from coronary thrombosis, and had consulted a Dr. Whittaker, attached to the Civilian Conservation Corps camp at San Mateo, New Mexico, and that said doctor had informed said Christensen of his disease and advised that he should remain in bed until he had consulted a private physician.

6. That during all the time the said Christensen was in the service of the defendants, he was employed as a carpenter, and received for his labor the sum of Three and 50/100 (\$3.50) Dollars per day, working (7) seven days a week.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

7. That on the morning of April 7, 1936, the said Christensen was not feeling well and on account thereof did not go to work, but that about ten o'clock in the morning of said day, he went to a building being constructed by the defendant and was ordered by the defendant's carpenter-foreman to go to work upon said building and assist with the carpenter work thereon; that about two o'clock in the afternoon of said day, Christensen and his helper were engaged in laying ship-lap on said building for roofing, and at said time were working upon a scaffold which was at least six feet above the ground.

8. That the ship-lap which Christensen and his helper were using for roofing was stacked against said scaffolding, so that one end was touching the ground and the other resting against the scaffolding, and that as a board would be nailed in place, Christensen or his helper would reach down and pull up another board; that while so engaged in his carpenter work, Christensen slumped down, started to slide down the boards, fell, and received a severe bruise upon his head, a cut on the eye, and a cut on the lip, and said cuts were distended; that he also received two broken ribs; that the fracture of one rib was so severe that it was completely parted and it punctured the lung, causing a severe internal hemorrhage, and that shortly thereafter the said Christensen died.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

9. That Christensen did not disclose to his employer he was suffering from heart trouble. [89]

10. That said Christensen had been employed by the defendants in McKinley County, New Mexico, from the 12th day of September, 1935, until the 7th day of April, 1936, which was the date of his death, but for sixteen years prior to coming to New Mexico in the employ of the defendants the said Christensen resided and worked in and about Alhambra, California; that the increase in altitude from Alhambra, California to Ambrosia Dome in McKinley County, in New Mexico, the place where the work was carried on, put an additional load upon the respiratory and cardiac systems of the said Christensen.

11. That the nature of the work which the said Christensen was doing immediately prior to his death materially contributed to and caused him to slump down, and slip from the scaffolding where he was working, and to fall; that the wound upon the forehead to said Christensen was severe, and as shown by the autopsy made by the physicians, there was considerable hemorrhage between the skull bone and the skin, and that there was a very large amount of blood in the pleural cavity, which was the immediate result of the puncture of the lung by the broken rib, and that practically all of said hemorrhage occurred prior to the death of said Christensen, and said *unjuries* and wounds

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

were of themselves sufficient to cause death, without regard to the heart condition, and that death was occasioned by an accident arising out of and in the course of his employment on behalf of the defendants.

12. That the plaintiff is the widow of said Christian Theodore Christensen and was dependent upon him for support at the time of his death, and that they did not have any children.

13. That the defendant has refused to pay any compensation herein and this action was instituted on April 17, 1936, after denial of liability, and that the plaintiff has employed Harris K. Lyle, an attorney of Gallup, New Mexico, as her attorney, and he is representing her in these proceedings, and a reasonable fee for his services is the sum of Five Hundred (\$500.00) Dollars.

And the court concludes as a matter of law that the plaintiff is entitled to recover upon her complaint; in addition to the statutory amount allowed the widow is entitled to the sum of One Hundred and Twenty-five (\$125.00) Dollars for funeral expenses and Five hundred [90] (\$500.00) Dollars for attorney's fees to Harris K. Lyle.

Now Therefore, It Is Ordered Adjudged and Decreed, that the plaintiff Mary T. Christensen do have and recover judgment against the defendants S. Dysart and New Mexico Oil Properties or either of them compensation in the sum of Two thousand Nine hundred and Forty (\$2940.00) Dollars pay-

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

able at the rate of Nine and 80/100ths (\$9.80) Dollars per week from and after the 7th day of April, 1936, together with the further sum of One hundred and Twenty-five (\$125.00) Dollars for funeral expenses and Five hundred (\$500.00) Dollars for attorney's fees.

It Is Further Ordered Adjudged and Decreed, that compensation for forty-nine (49) weeks from April 7th, 1936 to March 16th, 1937, to-wit, the sum of Four hundred and Eighty and 20/100 (\$480.20) Dollars, together with the sum of One hundred and Twenty-five (\$125.00) Dollars allowed for funeral expenses and the sum of Five hundred (\$500.00) Dollars allowed for attorney's fees, making in all the total sum of One thousand One hundred and five and 20/100ths (\$1105.20) Dollars, is immediately due and payable, and that the further sum of Nine and 80/100ths (\$9.80) Dollars per week will be due and payable commencing on March 23rd, 1937, and on the Tuesday of each successive week thereafter until the full sum has been paid, and for the said sums which are now due and payable let execution issue.

(Signed)

JAMES B. MCGHEE

District Judge of the Fifth
Judicial District, sitting for
and on behalf of the Hon.
David Chavez, Jr., District
Judge of the First Judicial
District. [91]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

The State of New Mexico

To the Sheriff of McKinley County, Greetings:

You Are Hereby Commanded, That of the goods and chattels, lands and tenements of S. Dysart and New Mexico Oil Properties in your County, you cause to be made the sum of \$3565.00 Dollars damages, and Dollars cost of suit, which by the judgment of our District Court within and for the County of McKinley and State aforesaid, at the Feb. term thereof, A. D., 1937, Mary T. Christensen recovered against the said S. Dysart and New Mexico Oil Properties, with interest thereon from the 22nd day of March, A. D. 1937, until paid, at the rate of six per cent, per annum, and also the costs that may accrue; and due return made of your proceedings on this writ before our said District Court, within sixty days hereof, to render, etc., and have you then and there this writ.

Witness, The Hon. David Chavez, Jr., Judge of the District Court of the First Judicial District of the State of New Mexico, within and for the County of McKinley and the seal of said Court this 8th day of Sept., A. D., 1937.

[Seal] MARTIN LOPEZ

Clerk.

By -----

Deputy.

Filed Mar. 19. 1938. Martin Lopez, Clerk. [92]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

CERTIFICATE OF SERVICE

I, Dwight Craig, Undersheriff of McKinley County, do hereby certify that I served the attached Writ of Execution on the 22nd day of September, 1937 by taking into my custody the following personal property:

All the furniture contained in one 6-room house

One electric washer

One Mangle

All the furniture contained in one bunkhouse

One 2½-ton Reo truck

One 1½-ton Chevrolet truck

One 1936 Chevrolet pick-up

One 1500-watt Kohler electric light plant

680 ft. of 8-in. casing on the ground near water
well

580 ft. of 4-in. casing

4 head of cows

1320 ft. of 12½-in. casing in oil well

2 complete strings of drilling and fishing tools

One 70-horse power steam boiler

3 1000-bbl. steel tanks

1 gasoline engine

3 tents, 18' x 22'

24 single beds with mattresses

1 large radio

400 ft. of 12½-in. casing

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

150 sacks aquajell

55 joints of 2½-in. water pipe

(Signed) D. W. ROBERTS,

Sheriff

By D. A. CRAIG

Undersheriff

Filed Mar. 19, 1938. Martin Lopez, Clerk. [93]

The State of New Mexico

To the Sheriff of McKinley County, Greetings:

You Are Hereby Commanded, That of the goods and chattels, lands and tenements of S. Dysart in your County, you cause to be made the sum of \$245.00 plus costs of service of this writ, advertising, and sale.....Dollars damages, and..... Dollars cost of suit, which by the judgment of our District Court within and for the County of McKinley and State aforesaid, at the Feb. term thereof, A. D., 1937, Mary T. Christensen recovered against the said S. Dysart, with interest thereon from the 15th day of July, A. D., 1939, until paid, at the rate of six per cent, per annum, and also the costs that may accrue; and due return made of your proceedings on this writ before our said District Court, within sixty days hereof, to render, etc., and have you then and there this writ.

Witness, The Hon. David Chavez, Jr., Judge of the District Court of the First Judicial District of

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

the State of New Mexico, within and for the County
of McKinley and the seal of said Court this 21st
day of November, A. D., 1939.

[Seal] EVA ELLEN SABIN

Clerk

By B. MARTINEZ

Deputy.

Filed Dec. 14, 1939. Eva Ellen Sabin, County
Clerk. [94]

CERTIFICATE OF SERVICE

State of New Mexico

County of McKinley—ss.

I, the undersigned, do hereby certify that I received the attached Writ of Execution on the 21st day of November, 1939 and that I served the same on the 13th day of December, 1939 by levying upon and taking possession of thirty-one (31) pieces of used oil well casing, 10-inch in diameter and 20-foot lengths, stacked near the well known as Dysart No. 2, located on Section 14, Township 14 North, Range 19 West, N.M.P.M. in McKinley County, New Mexico.

I further certify that I am entitled to fees for this execution for 162 miles travelled at the rate of eight cents per mile making the amount of \$12.96, and \$1.50 for the service of the writ, making in all \$14.46.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In Witness Whereof, I have hereunto set my
hand and seal this 14th day of December, 1939.

(Signed) D. W. ROBERTS

Sheriff

(Signed) D. A. CRAIG

Undersheriff.

Filed Dec. 14, 1939. Eva Ellen Sabin, County
Clerk. [95]

The State of New Mexico

ALIAS WRIT

To the Sheriff of McKinley County, Greetings:

You Are Hereby Commanded, That of the goods
and chattels, lands and tenements of Stella Dysart
in your County, you cause to be made the sum of
Nine hundred seventy-four and 17/100 (\$974.17)
Dollars damages, and Fourteen and 46/100 (\$14.46)
Dollars cost of suit, which by the judgment of our
District Court within and for the County of Mc-
Kinley and State aforesaid, at the March term
thereof, A. D., 1937, Mary T. Christensen recovered
against the said Stella Dysart with interest thereon
from the.....day of.....A. D., 192 , until
paid, at the rate of.....per cent, per annum, and
also the costs that may accrue; and due return
made of your proceedings on this writ before our
said District Court, within sixty days hereof, to
render, etc., and have you then and there this writ.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

Witness, The Hon. David Chavez, Jr., Judge of the District Court of the First Judicial District of the State of New Mexico, within and for the County of McKinley and the seal of said Court this 5th day of May, A. D., 1941.

[Seal] EVA ELLEN SABIN

Clerk

By B. MARTINEZ

Deputy

Filed June 11, 1941. Eva Ellen Sabin, County Clerk. [96]

State of New Mexico

ss

County of McKinley

I, the undersigned, do hereby certify that I am a Deputy Sheriff of McKinley County, New Mexico; that I received the within Writ of Execution on the 6th day of May, 1941; That I served the same by delivering a copy thereof to H. Eaves, caretaker for the defendant Stella Dysart, and by taking into my possession the following described personal property;

1. One locomotive type boiler 55 H. P. with trimmings make oil well supply.
2. One boiler feed pump.
3. One ideal Ajax steam drilling engine, 12 x 12 with flywheel.
4. Pully and Balance rims.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

5. One Ply national steam Turbine Generator.
6. One complete Standard rig well 6' rig irons together with 85" derrick engine house.
7. Belt house and derrick house rig made by Union Tool Company.
8. One Crown Block, complete with sheaves. One three sheaves traveling block.
9. One 6" swivel hook spring type. One inch calf line.
10. One temper screw with rope clamps.
11. One oil forge.
12. One Star Steam blower.
13. One Swivel Wrench.
14. Two derrick cranes.
15. One No. 2 Bartlett Cycle Jack.
16. Two 5 1/2" Tool Wrenches.
17. Two Wire line sockets, 2 3/4 x 3 3/4 joints.
18. One substitute 3 x 4 pin, 2 3/4 x 3 3/4 box.
19. One substitute 2 3/4 x 3 3/4 pin, 4x5 box.
20. One latch jack for eight inch hole with 2 3/4 x 3 3/4 pin.
21. One set No. 16 Vulcan chain tongs.
22. One combination socket for eight inch hole with 2 1/2 x 3 1/2 pin.
23. One 5 in. drill stem, 30 feet long jars and sinker bars connected.
24. One 14 1/2 x 25 drill stem.
25. One set fishing jars, 5 1/2 inches.
26. One substitute.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

27. One combination socket for ten inch hole.
28. One set casing tongs.
29. One dun tool brace.
30. One forgery handle.
31. Two sets five and half inch drilling jars,
2 3/4 x 3 3/4---7 joints.
32. One round fuel tank. Two feet six inches by
eight feet four inches.
33. Two gasoline tanks four feet three inches
by three feet.
34. Twenty seven lengths of 8 1/4 casings.
35. Four short joints, 8 1/4 casings.
36. One eight inch bailer, 12 feet long.
37. Two five and a half inch tool wrenches.
38. One rope socket, 2 1/2 x 3 1/2.
39. One swivel socket Canadian Pattern, 2 1/4
x 3 1/4 joint.
40. One substitute 2 1/4 x 3 1/4 pin, 2 1/2 x 3 1/2
box.
41. One pair 8 1/4 casings clamps.
42. One water tank--wagon type.
43. Sixty length 2 1/2 upset tubing.
44. Eight length of two inch pipe.
45. One wooden reel of sand line.
46. One premier gear driven force pump.
47. One Fairbanks Morse steam driven mud hog
pump.
48. One three prong grab 2 1/4 x 3 1/4 pin.
49. One Substitute 2 1/2 x 3 1/2 pin, 2 1/4 x
3 1/4 box.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

50. One set ten inch casing clamps.
51. One center spear, $2\frac{1}{2}$ x $3\frac{1}{2}$ pin.
52. One center spear $2\frac{3}{4}$ x $3\frac{3}{4}$ pin.
53. Two ten inch drill bits, $3\frac{1}{4}$ x $4\frac{1}{4}$ pin.
54. Two eight inch drill bits $2\frac{3}{4}$ x $3\frac{3}{4}$ pin.
55. One six inch latch jack, $2\frac{1}{4}$ x $3\frac{1}{4}$ pin.
56. One casing spider with rig and slips for 8,
10, and 12 inch pipe.
57. One $3\frac{1}{2}$ inch swivel hook.
58. One substitute $2\frac{1}{2}$ x $3\frac{1}{2}$ pin, $2\frac{1}{4}$ x $3\frac{1}{4}$
box.
59. One ten inch drill bit $2\frac{1}{4}$ x $3\frac{1}{4}$ pin.
60. One substitute $2\frac{1}{2}$ x $3\frac{1}{2}$ pin, $2\frac{3}{4}$ x $3\frac{3}{4}$
Box. [97]
61. One drill stem $4\frac{1}{2}$ x 20 feet long, $2\frac{1}{2}$ x
 $3\frac{1}{2}$ box and pin.
62. One set $5\frac{1}{2}$ drilling jars. $2\frac{1}{2}$ x $3\frac{1}{2}$ box
and pin.
63. One Prosser socket, $2\frac{1}{2}$ x $3\frac{1}{2}$ box.
64. One $4\frac{1}{2}$ drill stem, 31 feet 9 inches long
with $2\frac{3}{4}$ x $3\frac{3}{4}$ pin, $3\frac{1}{4}$ x $4\frac{1}{4}$ box.
65. One dart bailer valve, $4\frac{1}{4}$ x 16 feet long.
66. One dart bailer $6\frac{5}{8}$ x 12 feet long.
67. One Auger type bailer, 3 inc. tube.
58. One Cementing bailer for 3 in. tubing.
69. One Dart valve bailer, 10 inch, 18 feet long.
70. Six lengths of ten inch forty pound weld
casing.
71. Two pieces of eight inch well casing.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

72. Two lengths of four and three fourths OD casing.
73. One Swedge nipple, 15 1/2 to 8 1/4.
74. One 2 1/2 inch tubing to tool joint substitute.
75. One swedge nipple 10 to 8.
76. One swedge nipple 2 1/2 to 10.
77. One set tube under reamer lugs, 19 inch.
78. 2000 feet of 6 x 7 sandline.
79. One bit dressing ramp.
80. One two hundred and fifty barrel Columbian steel boltrd tank.
81. One four inch drill stem, 20 feet eight inches long, 2 1/2 x 3 1/2 box and pin.
82. One eight inch control head.
83. One wall hook for 12 1/2 inch hole with 3 1/4 x 4 1/4 inch pin.
84. One pipe to tool joint substitute 3 1/4 x 4 1/4 box and pin for 8 5/8 OD casing.
85. One prosser socket 2 3/4 x 3 3/4.
86. To 15 1/2 drill bits 2 1/4 x 3 3/4 pin.
87. One 15 1/2 drill bit, 2 3/4 x 3 3/4 pin.
88. One 12 1/2 inch under reamdr.
89. One 18 inch, 3 sheaves casing block.
90. Two 8 inch drill bits 2 1/4 x 3 1/4 pin.
91. One Burns well socket, 2 1/2 x 3 1/4 pin.
92. One six inch drill bit, 2 1/2 x 3 1/2 pin.
93. One 15 1/2 inch Buiberson casing tong.
94. One 12 1/2 inch Anchor wall packer.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

95. One Bailer dart valve type 6 3/4 x 20 feet long.

96. One dart valve v bailer, 8 in. by 19 feet long.
On the 6th day of June, 1941 in McKinley County,
New Mexico.

In Witness Whereof, I have hereunto set my
hand and seal this 9th day of June, 1941.

W. N. DANNER,
Deputy Sheriff. [98]

AMENDED RETURN OF EXECUTION

I, D. F. Mollica, Sheriff of McKinley County, do hereby certify that on the 6th day of June, 1941 I served a writ of execution in that certain cause entitled Mary T. Christensen, plaintiff, vs. S. Dysart and New Mexico Oil Properties, defendants and numbered 5134, which said writ of execution is hereunto affixed, and that at said time I did levy execution upon all of the well cssing in three certain wells numbered and located as follows:

Dysart No. 1 well in the Northwest Quarter of the Northeast Quarter (NW 1/4 of NE 1/4) of Section 14, Township 14 North, Range 10 West,

Ambrosia Investors Company No. 1 well in the Southeast Quarter of the Southeast Quarter (SE 1/4 of SE 1/4) of Section 11, Township 14 North, Range 10 West,

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

S. Dysart No. 1 well in the Southwest Quarter of the Southwest Quarter (SS $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section 21, Township 14 North, Range 9 West,

and that through inadvertence these items were omitted from the earlier return of service made in this cause.

In Witness Whereof, I have hereunto set my hand and seal this 17 day of July, 1941.

D. F. MOLLICA,

Sheriff

By W. N. DANNER,

Deputy.

Filed Jul. 17, 1941. Eva Ellen Sabin [99]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5134

MARY T. CHRISTENSEN,

Plaintiff

vs.

S. DYSART and NEW MEXICO OIL PROP-
ERTIES,

Defendant

NOTICE OF EXECUTION SALE

Public Notice Is Hereby Given:

That the undersigned will, on the 7th day of July, 1941 at the front door of the Courthouse of McKinley County in Gallup, New Mexico at the hour of ten o'clock in the forenoon, offer for sale at public auction to the highest and best bidder for cash the following described goods and chattels:

One locomotive type boiler 55 H. P. with trimmings, make, Oil Well Supply, one boiler feed pump, one Ideal Ajax steam drilling engine, 12x12 with flywheel, pully and balance rims, one ply national steam turbine generator, one complete Standard rig well 6' rig irons together with 85" derrick engine house, belt

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

house and derrick house rig made by Union Tool Company, one Crown Block, complete with sheaves, one three sheaves traveling block, one 6" swivel hook spring type, one inch calf line, one temper screw with rope clamps, one oil forge, one Star steam blower, one swivel wrench, two derrick cranes, one No. 2 Bartlett cycle jack, two 5 1/2" tool wrenches, two wire line sockets, 2 3/4 x 3 3/4 joints, one substitute 3x4 pin, 2 3/4 x 3 3/4 box, one substitute 2 3/4 x 3 3/4 pin, 4x5 box, one latch jack for eight inch hole with 2 3/4 x 3 3/4 pin, one set No. 16 Vulcan chain tongs, one combination socket for eight inch hole with 2 1/2 x 3 1/2 pin, one 5-in. drill stem, 30 feet long jars and sinker bars connected, one 14 1/2 x 25 drill stem, one set fishing jars, 5 1/2 inches, one substitute, one combination socket for ten inch hole, one set casing tongs, one dun tool brace, one forgey handle, two sets five and half inch drilling jars, 2 3/4 x 3 3/4, 7 joints, one round fuel tank, 2'6" x 8'4", two gasoline tanks 4'3" x 3, 27 lengths of 8 1/4 casings, 4 short joints 8 1/4 casing, one 8" bailer 12' long, two 5 1/2" tool wrenches, one rope socket 2 1/2 x 3 1/2, one swivel socket Canadian pattern, 2 1/4 x 3 1/4 joint, one substitute 2 1/4 x 3 1/4 pin, 2 1/2 x 3 1/2 box, one pair 8 1/4 casing clamps, one water tank, wagon type, 60 length

Petitioning Creditors' Exhibit No. 1 for

Identification—(Continued)

2 1/2 upset tubing, 8 length 2-in. pipe, one wooden reel of sand line, one Premier gear driven force pump, one Fairbanks Morse steam driven mud hog pump, one three-prong grab 2 1/4 x 3 1/4 pin, one substitute 2 1/2 x 3 1/2 pin, 2 1/4 x 3 1/4 box, one set 10-in. casing clamps, one center spear, 2 1/2 x 3 1/2 pin, one center spear 2 3/4 x 3 3/4 pin, two 10-in. drill bits, 3 1/4 x 4 1/4 pin, two 8-in. drill bits 2 3/4 x 3 3/4 pin, one 6-in. latch jack 2 1/4 x 3 1/4 pin, one casing spider with rig and slips for 8, 10 and 12 inch pipe, one 3 1/2 inch swivel hook, one substitute 2 1/2 x 3 1/2 pin, 2 1/4 x 3 1/4 box, one 10-in. [100] drill bit 2 1/4 x 3 1/4 pin, one substitute 2 1/2 x 3 1/2 pin, 2 3/4 x 3 3/4 box, one drill stem 4 1/2 x 20 feet long, 2 1/2 x 3 1/2 box and pin, one set 5 1/2 drilling jars 2 1/2 x 3 1/2 box and pin, one Prosser socket 2 1/2 x 3 1/2 box, one 4 1/2 drill stem, 31 ft. 9 in. long with 2 3/4 x 3 3/4 pin, 3 1/4 x 4 1/4 box, one dart bailer valve 4 1/4 x 16 ft. long, one dart bailer valve 4 1/4 x 16 ft. long, *on* one dart bailer 6 5/8 x 12 ft. long, one Augur type bailer 3 in. tube, one cementing bailer for 3-in. tubing, one dart valve bailer, 10 in., 18 ft. long, 6 lengths of 10-in. 40-lb. weld casing, two pieces of 8-in. well casing, two lengths of 4 3/4 OD casing, one Swedge nipple 15 1/2 to 8 1/4, one 2 1/2-

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

in. tubing to tool joint substitute, one swedge nipple 10 to 8, one swedge nipple $2\frac{1}{2}$ to 10, one set tube under reamer lugs, 10-in., 2000 ft. of 6 x 7 sandline, one bit dressing ramp, one 250-bbl. Columbian steel bolted tank, one 4-in. drill stem, 20 ft. 8 in. long, $2\frac{1}{2}$ x $3\frac{1}{2}$ box and pin, one 8-in. control head, one wall hook for $12\frac{1}{2}$ inch hole with $3\frac{1}{4}$ x $4\frac{1}{4}$ inch pin, one pipe to tool joint substitute $3\frac{1}{4}$ x $4\frac{1}{4}$ box and pin for $8\frac{5}{8}$ OD casing, one prosser socket $2\frac{3}{4}$ x $3\frac{3}{4}$, two $15\frac{1}{2}$ drill bits $2\frac{1}{4}$ x $3\frac{3}{4}$ pin, one $15\frac{1}{2}$ drill bit, $2\frac{3}{4}$ x $3\frac{3}{4}$ pin, one $12\frac{1}{2}$ inch under reamer, one 18-in. 3 sheaves casing block, two 8-in. drill bits $2\frac{1}{4}$ x $3\frac{1}{4}$ pin, one Burns well socket, $2\frac{1}{2}$ x $3\frac{1}{2}$ pin, one 6-in. drill bit, $2\frac{1}{2}$ x $3\frac{1}{2}$ pin, one $15\frac{1}{2}$ in. Buiberson casing tong, one $12\frac{1}{2}$ in. Anchor wall packer, one bailer dart valve type $6\frac{3}{4}$ x 20 ft. long, one dart valve bailer, 8-in. x 19 ft. long.

The foregoing property will be sold to satisfy the balance due of a certain judgment entered on the 22nd day of March, 1937 in a suit entitled Mary T. Christensen, Plaintiff, and S. Dysart and New Mexico Oil Properties, Defendants, and numbered 5134 on the records of the District Court in and for the County of McKinley and duly recorded in Book I at page 404 of Judgment Records of said county, of which judgment there remains due and

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

unpaid the sum of One Thousand Seven Hundred and Thirty-four and 60/100 (\$1734.60) Dollars with interest to the date of the sale in the sum of Fifty-eight and 84/100 (\$58.84) Dollars and costs of execution in the further sum of Twenty-eight and 92/100 (\$28.92) Dollars and the cost of sale and publishing this notice.

All the above property will be sold as it now lies on the ground near Ambrosia Lake.

Dated this 10th day of June, 1941.

(Signed) D. F. MOLLICA,
Sheriff.

Publication:

Jun. 11, 1941

18

25

July 2

[Filed]: June 11, 1941. [101]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the County
of McKinley.

No. 5134

MARY T. CHRISTENSEN,

Plaintiff,

vs.

S. DYSART and NEW MEXICO OIL PROP-
ERTIES,

Defendants.

REPORT OF SALE

Now comes D. F. Mollica, Sheriff of McKinley County, acting by and through D. W. Roberts, undersheriff, and makes this his report, acts and doings in the premises.

I.

That on the 7th day of July, 1941 at the hour of ten o'clock A. M. at the front door of the court house of McKinley County in Gallup, New Mexico, the undersigned did offer for sale at public auction to the highest and best bidder for cash all of those chattels and items as specifically set out in the Notice of Sale and filed herein.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

II.

That the aforesaid Notice of Sale was duly published in the Gallup Independent, a newspaper of general circulation in the Town of Gallup, for four successive weeks as required by law and as more particularly appears from the affidavit of A. W. Barnes duly filed in this cause.

III.

That there was more than one bid received at said sale, and that the opening bid was Two Hundred (\$200.00) Dollars and the highest and best bid was Nine Hundred and Fifty (\$950.00) Dollars made by John Ashback of Durango, Colorado, and that said sum was the highest and best bid which could be obtained under the circumstances. That the undersigned upon learning that no higher bid could be obtained, accepted the bid of the said John Ashback.

IV.

That thereafter the undersigned made and executed a bill of sale covering the aforesaid property and conveying all of the goods, wares and chattels described in the published notice of sale to the said John Ashback for the consideration of Nine Hundred and Fifty (\$950.00) Dollars, a copy of which bill of sale has been filed in the records of this cause. [102]

V.

That the undersigned received from the said John

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

Ashback the sum of \$950.00 in cash, and that out of said funds there were paid the following costs and expenses of said sale:

Levy of execution and mileage.....	\$ 28.92
Statutory commissions on holding of sale (4% on first \$500.00 and 2% on excess)	29.00
Cost of publication of notice of sale in the Gallup Independent.....	40.82

and that the balance of the funds received, to-wit, the sum of Eight Hundred and Fifty-one and 26/100 (\$851.26) Dollars, was paid over to the attorney for the plaintiff.

Wherefore, the undersigned prays that this Honorable Court shall be pleased to approve and confirm his acts and doings in the premises.

D. F. MOLLICA,

Sheriff.

By D. W. ROBERTS,

Undersheriff.

State of New Mexico,
County of McKinley—ss.

D. W. Roberts, being first duly sworn, deposes and says:

That he is the undersheriff whose name is subscribed to the foregoing Report of Sale; that he

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

has read said report and knows the contents thereof,
and the same is true of his own knowledge.

D. W. ROBERTS.

Subscribed and sworn to this 8th day of July,
1941, before me,

MARY A. LYLE,

Notary Public in and for the County of McKinley
and State of New Mexico.

My commission expires: Dec. 9, 1943. [Seal]

Filed: Jul. 8, 1941. [103]

SHERIFF'S BILL OF SALE

Know All Men By These Presents:

That I, D. F. Mollica, duly elected, qualified and
acting sheriff of McKinley County, New Mexico,
for and in consideration of the sum of Nine Hun-
dred and Fifty (\$950.00) Dollars to me in hand
paid by John Ashbeck of Durango, Colorado, the
receipt whereof is hereby confessed and acknowl-
edged, do hereby bargain, sell, transfer, assign and
set over unto the said John Ashbeck all of the fol-
lowing described goods and chattels as they now are
lying on the ground in the vicinity of Ambrosia
Lake, McKinley County, New Mexico, to-wit:

One locomotive type boiler 55 H.P. with
trimmings, make, Oil Well Supply, one boiler
feed pump, One Ideal Ajax steam drilling en-
gine, 12x12 with flywheel, pulley and balance

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

rims, one ply national steam turbine generator, one complete Standard rig well 6' rig irons together with 85" derrick engine house, belt house and derrick house rig made by Union Tool Company, one Crown Block, complete with sheaves, one three sheaves traveling block, one 6" swivel hook spring type, one inch calf line, one temper screw with rope clamps, one oil forge, one Star steam blower, one swivel wrench, two derrick cranes, one No. 2 Bartlett cycle jack, two 51½" tool wrenches, two wire line sockets, 2¾ x 3¾ joints, one substitute 3x4 pin, 2¾x3¾ box, one substitute 2¾x3¾ pin, 4x5 box, one latch jack for eight inch hole with 2¾x3¾ pin, one set No. 16 Vulcan chain tongs, one combination socket for eight inch hole with 2½x3½ pin, one 5-in. drill stem, 30 feet long jars and sinker bars connected, one 14½x25 drill stem, one set fishing jars, 5½ inches, one substitute, one combination socket for ten inch hole, one set casing tongs, one dun tool brace, one forgey handle, two sets five and half inch drilling jars, 2¾x3¾, 7 joints, one round fuel tank, 2'6"x8'4", two gasoline tanks 4'3"x3', 27 lengths of 8¼ casings, 4 short joints 8¼ casing, one 8" bailer 12' long, two 51½" tool wrenches, one rope socket 2½x3½, one swivel socket Canadian pattern, 2¼x3¼ joint, one substitute 2¼x3¼ pin, 2½x3½ box, one pair of 8¼ casing clamps, one water tank, wagon type, 60

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

length $2\frac{1}{2}$ upset tubing, 8 length 2-in. pipe, one wooden reel of sand line, one Premier gear driven force pump, one Fairbanks Morse steam driven mud hog pump, one three-prong grab $2\frac{1}{4}\times 3\frac{1}{4}$ pin, one substitute $2\frac{1}{2}\times 3\frac{1}{2}$ pin, $2\frac{1}{4}\times 3\frac{1}{4}$ box, one set 10-in. casing clamps, one center spear, $2\frac{1}{2}\times 3\frac{1}{2}$ pin, one center spear $2\frac{3}{4}\times 3\frac{3}{4}$ pin, two 10-in. drilling bits, $3\frac{1}{4}\times 4\frac{1}{4}$ pin, two 8-in. drill bits $2\frac{3}{4}\times 3\frac{3}{4}$ pin, one 6-in. latch jack $2\frac{1}{4}\times 3\frac{1}{4}$ pin, one casing spider with rig and slips for 8, 10 and 12 inch pipe, one $3\frac{1}{2}$ inch swivel hook, one substitute $2\frac{1}{2}\times 3\frac{1}{2}$ pin, $2\frac{1}{4}\times 3\frac{1}{4}$ box, one 10-in. drill bit $2\frac{1}{4}\times 3\frac{1}{4}$ pin, one substitute $2\frac{1}{2}\times 3\frac{1}{2}$ pin, $2\frac{3}{4}\times 3\frac{3}{4}$ box, one drill stem $4\frac{1}{2}\times 20$ feet long, $2\frac{1}{2}\times 3\frac{1}{2}$ box and pin, one set $5\frac{1}{2}$ drilling jars, $2\frac{1}{2}\times 3\frac{1}{4}$ box and pin, one Prosser socket $2\frac{1}{2}\times 3\frac{1}{2}$ box, one $4\frac{1}{2}$ drill stem, 31 ft. 9 in. long with $2\frac{3}{4}\times 3\frac{3}{4}$ pin, $3\frac{1}{4}\times 4\frac{1}{4}$ box, one dart bailer valve $4\frac{1}{4}\times 16$ ft. long, one dart bailer valve $4\frac{1}{4}\times 16$ ft. long, one dart bailer $6\frac{5}{8}\times 12$ ft. long, one Augur type bailer 3 in. tube, one cementing bailer for 3-in. tubing, one dart valve bailer, 10 in., 18 ft. long, 6 lengths of 10-in. 40-lb. weld casing, two pieces of 8-in. well casing, two lengths of $4\frac{3}{4}$ OD casing, one Swedge nipple $15\frac{1}{2}$ to $8\frac{1}{4}$, one $2\frac{1}{2}$ -in. tubing to tool joint substitute, one swedge nipple 10 to 8, one swedge nipple $2\frac{1}{2}$ to 10, one set tube under reamer lugs, 10-in., 2000 ft. of 6x7 sandline, one [104] bit dressing ramp.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

one 250-bbl. Columbian steel bolted tank, one 4-in. drill stem, 20 ft. 8 in. long, $2\frac{1}{2} \times 3\frac{1}{2}$ box and pin, one 8-in. control head, one wall hook for $12\frac{1}{2}$ inch hole with $3\frac{1}{4} \times 4\frac{1}{4}$ inch pin, one pipe to tool joint substitute $3\frac{1}{4} \times 4\frac{1}{4}$ box and pin for $8\frac{5}{8}$ OD casing, one Prosser socket $2\frac{3}{4} \times 3\frac{3}{4}$, two $15\frac{1}{2}$ drill bits $2\frac{1}{4} \times 3\frac{3}{4}$ pin, one $15\frac{1}{2}$ drill bit, $2\frac{3}{4} \times 3\frac{3}{4}$ pin, one $12\frac{1}{2}$ inch under reamer, one 18-in. 3 sheaves casing block, two 8-in. drill bits $2\frac{1}{4} \times 3\frac{1}{4}$ pin, one Burns well socket, $2\frac{1}{2} \times 3\frac{1}{2}$ pin, one 6-in. drill bit, $2\frac{1}{2} \times 3\frac{1}{2}$ pin, one $15\frac{1}{2}$ -in. Buiberson casing tong, one $12\frac{1}{2}$ in. Anchor wall packer, one bailer dart valve type $6\frac{3}{4} \times 20$ ft. long, one dart valve bailer, 8-in. \times 19 ft. long.

To Have and To Hold, unto the said John Ashbeck, his heirs and assigns, to his and their own use forever.

And I do further certify that the aforesaid goods and chattels and all of them were offered for sale at public auction at the front door of the courthouse of McKinley County in Gallup, New Mexico on the 7th day of July, 1941 at the hour of ten o'clock A.M. on said day, and that the aforesaid sum of \$950.00 was bid by the said John Ashbeck and was the highest and best bid which could be obtained at that time and that the aforesaid sale was held pursuant to a Notice of Execution Sale duly made, entered and published in a certain cause

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

entitled Mary T. Christensen, plaintiff, vs. S. Dysart and New Mexico Oil Properties, defendants, which said cause was pending in the District Court of the State of New Mexico in and for the County of McKinley, and was numbered 5134 on the records of said court.

In Witness Whereof, I have hereunto set my hand and seal this 7th day of July, 1941.

D. F. MOLLICA,
Sheriff

By D. W. ROBERTS
Under Sheriff

State of New Mexico
County of McKinley—ss.

On this 7th day of July, 1941 personally appeared before me D. W. Roberts, to me known to be the person who executed the foregoing bill of sale as under sheriff of McKinley County, New Mexico, and acknowledged that he executed the same for the uses and purposes therein expressed as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

[Seal] MARY A. LYLE

Notary Public in and for the County of McKinley
and State of New Mexico.

My Commission expires Dec. 9, 1943.

Filed Jul. 7, 1941. [105]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

NOTICE OF EXECUTION SALE

Public Notice Is Hereby Given:

That the undersigned sheriff of McKinley County will on the 12th day of August, 1941 at the hour of ten o'clock A. M. at the front door of the court house in Gallup, McKinley County, offer for sale at public auction to the highest and best bidder for cash the following described personal property, to-wit:

All of the pipe or casing in three certain wells named and located as follows:

Dysart No. 1 well in the Northwest quarter of the Northeast Quarter ($NW\frac{1}{4}$ of $NE\frac{1}{4}$) of Section 14, Township 14 North, Range 10 West.

Ambrosia Investors Company No. 1 well in the Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}$ of $SE\frac{1}{4}$) of Section 11, Township 14 North, Range 10 West.

S. Dysart No. 1 well in the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$) of Section 21, Township 14 North, Range 9 West.

The foregoing property will be sold to satisfy the balance of a certain judgment entered on the 22nd

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

day of March, 1937 in a cause entitled Mary T. Christensen, plaintiff, vs. S. Dysart and New Mexico Oil Properties, defendants, and numbered 5134 on the records of the District Court in and for the County of McKinley, State of New Mexico and duly recorded in Book I at page 404 of the judgment records of said county, of which judgment there remains due and unpaid the sum of Nine Hundred and Forty-One and 68/100 (\$941.68) Dollars, together with interest to the date of the sale in the amount of Four and 75/100 (\$4.75) Dollars, together with the costs of the sale and the publishing of this notice.

The pipe will be sold in the ground, and recovery thereof will be at the risk of the buyer.

Dated this 17th day of July, 1941.

(Signed) D. F. MOLLICA,
 Sheriff.

Publication:

July 18, 1941

25

Aug. 1

8

Filed Jul. 17, 1941. [106]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the County
of McKinley.

No. 5134

MARY T. CHRISTENSEN,

Plaintiff,

vs.

S. DYSART and NEW MEXICO OIL PROPER-
TIES,

Defendants.

ORDER APPROVING SALE

This case having come on to be heard this 10th day of July, 1941 upon the sheriff's report of an execution sale, and the Court having carefully examined the said report and other papers filed in the cause and being fully advised herein, finds that the facts stated in the aforesaid Report of Sale are and each of them is true and correct.

The Court concludes that the aforesaid execution sale was regular in form and due notice thereof pursuant to statute was given, that the sum of \$950.00 was the highest and best bid which could be obtained and was a reasonable sum in the premises.

Now Therefore, It Is Ordered, Adjudged and Decreed, that the acts of the sheriff and the con-

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

duct of the sale be and the same hereby are approved and confirmed and the bill of sale duly executed by the aforesaid sheriff is confirmed; that the expenditure for the costs of sale were for items which were regular and according to law, and that the balance of money distributed should be applied as a credit against the judgment.

JAMES B. MCGHEE,

Judge of the Fifth Judicial District sitting for and
on behalf of the Hon. David Chavez, Jr., Judge
of the First Judicial District.

Filed Jul 12, 1941. [107]

In the District Court of the State of New Mexico,
First Judicial District in and for the County
of McKinley

No. 5134

MARY T. CHRISTENSEN,

Plaintiff,

v.

S. DYSART and NEW MEXICO OIL
PROPERTIES,

Defendants.

REPORT OF SALE

Now comes D. F. Mollica, Sheriff of McKinley County, and makes this report of his acts and doings:

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

I.

That on the 12th day of August, 1941 at the hour of ten o'clock A.M. at the front door of the Court-house of McKinley County in Gallup, New Mexico, the undersigned did offer for sale at public auction to the highest and best bidder for cash, all the pipe in three wells as more particularly set out in the Notice of Sale duly filed herein.

II.

That the aforesaid Notice of Sale was duly published in the Gallup Independent, a newspaper of general circulation in the County of McKinley for four successive weeks as required by law, as more particularly appears from the affidavit of A. W. Barnes duly filed in this cause.

III.

That pursuant to the notice of sale, the undersigned did offer the property described in the notice to the buyers under the following condition:

“The pipe will be sold in the ground and the recovery thereof will be at the risk of the buyer.”

That upon the public offering under those conditions, there was only one bid received, to-wit, the sum of One Hundred and Fifty (\$150.00) Dollars by John Ashback of Durango, Colorado; that no

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

other person attended the sale and no other bid was received, and that the aforesaid bid of \$150.00 was the highest and best bid which could be obtained under the circumstances.

IV.

That thereafter the undersigned made and executed a Bill of Sale covering the property and conveying all of the property described in the published notice of sale to the said John Ashback for consideration of \$150.00, a copy of which Bill of Sale is hereunto annexed.

V.

That the said John Ashback paid to the undersigned the sum of One Hundred and Fifty (\$150.00) Dollars, and that out of said fund there were paid the following expenses of the sale: [108]

Publication of the notice of sale

to the Gallup Independent.....\$14.78

Statutory commission, 4%, to sheriff.....\$ 6.00

And that the balance of the funds, to-wit, the sum of One Hundred and Twenty-nine and 22/100 (\$129.22) Dollars was paid over to the attorney for the plaintiff.

Wherefore, The undersigned prays that this honorable Court shall be pleased to approve and confirm his acts and doings in the premises and to

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

direct him to deliver the Bill of Sale, a copy of which is hereunto annexed.

(Signed) D. F. MOLLICA,

Sheriff

Filed Aug. 14, 1941. [109]

SHERIFF'S BILL OF SALE

Know All Men By These Presents:

That I, D. F. Mollica, duly elected, qualified and acting sheriff of McKinley County, New Mexico, for and in consideration of the sum of One Hundred and Fifty (\$150.00) Dollars to me in hand paid by John Ashback of Durango, Colorado, the receipt whereof is hereby confessed and acknowledged, do hereby bargain, sell, transfer, assign and set over unto the said John Ashback all of the following described goods and chattels as they now are in the ground in the vicinity of Ambrosia Lake, McKinley County, New Mexico, to-wit:

All of the pipe or casing in three certain wells named and located as follows:

Dysart No. 1 well in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 14, Township 14 North, Range 10 West,

Ambrosia Investors Company No. 1 well in the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 11, Township 14 North, Range 10 West,

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

S. Dysart No. 1 well in the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section 21, Township 14 North, Range 9 West.

To Have and To Hold, unto the said John Ashback, his heirs and assigns, to his and their own use forever.

And I do further *dertify* that the aforesaid goods and chattels and all of them were offered for sale at public auction at the front door of the courthouse of McKinley County in Gallup, New Mexico, on the 12th day of August, 1941 at the hour of ten o'clock A.M., and that the aforesaid sum of \$150.00 was bid by the said John Ashback and was the highest and best bid which could be obtained at that time, and that the aforesaid sale was held pursuant to a notice of sale duly made, entered and published in a certain cause entitled Mary T. Christensen, plaintiff, vs. S. Dysart and New Mexico Oil Properties, defendants, which said cause was pending in the District Court of the State of New Mexico in and for the County of McKinley, and was numbered 5134 on the records of said court.

In Witness Whereof, I have hereunto set my hand and seal this 14th day of August, 1941.

(Signed) D. F. MOLLICA
Sheriff

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

State of New Mexico

County of McKinley—ss.

On this 14th day of August, 1941, personally appeared before me D. F. Mollica, to me known to be the person who executed the foregoing Bill of Sale as Sheriff of McKinley County, New Mexico, and acknowledged that he executed the same for the uses and purposes therein expressed as his free act and deed. [110]

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

[Seal]

MARY A. LYLE

Notary Public in and for the County of McKinley
and State of New Mexico.

My commission expires Dec. 9, 1943. [111]

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the County
of McKinley

No. 5137

MARY T. CHRISTENSEN,

Plaintiff,

vs.

S. DYSART and NEW MEXICO OIL
PROPERTIES,

Defendants.

ORDER APPROVING SALE

This case having come on to be heard this 15 day of August, 1941 upon the sheriff's report of sale, and the Court having carefully examined the said report and other papers filed in the cause and being fully advised herein, finds that the facts stated in the aforesaid report are and each of them is true and correct.

The Court concludes that the aforesaid execution sale was regular in form and due notice thereof pursuant to statute thereof was given; that the sum of \$150.00 was the highest and best bid which could be obtained and was a reasonable sum in the premises.

Petitioning Creditors' Exhibit No. 1 for
Identification—(Continued)

Now Therefore, It Is Ordered, Adjudged and De-
creed, that the acts of the sheriff and the conduct of
the sale be and the same hereby are approved and
confirmed, and the Bill of Sale duly executed by the
sheriff is approved, and the sheriff is hereby author-
ized and directed to deliver said Bill of Sale to the
buyer, and that the expenditure for the costs of
sale in the sum of \$14.78 for publishing the notice
of sale and \$6.00 as the Sheriff's commission were
proper expenditures and should be first paid out of
the proceeds of the sale, and that the balance, to-
wit: the sum of \$129.22, should be applied as a
credit against the judgment.

JAMES B. McGHEE,

Judge of the Fifth Judicial
District sitting for and on
behalf of the Hon. David
Chavez, Jr., Judge of the
First Judicial District.

Filed Aug 18, 1941. [112]

PETITIONING CREDITORS' EXHIBIT No. 2
FOR IDENTIFICATION

11/4/42

CERTIFICATE

State of New Mexico,
County of McKinley—ss.

I, Eva Ellen Sabin, Clerk of the District Court in and for said County, do hereby certify that I have compared the papers in writing, to which this certificate is attached, with the original Judgment as the same appears of record and on file in my said office, at the court house, in said County, and that the same are true and correct copy of said original Judgment, and the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Gallup, McKinley County, New Mexico this 22nd day of October, 1942.

EVA ELLEN SABIN,
Clerk.

By B. MARTINEZ,
Deputy.

CERTIFICATE

State of New Mexico,
County of Bernalillo—ss.

I, Albert R. Kool, Judge of the Second Judicial District of the State of New Mexico, do hereby certify that Eva Ellen Sabin whose name is subscribed to the foregoing certificate of attestation,

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

now is, and was, at the time of signing and sealing the same, Clerk of the District Court of McKinley County aforesaid, which County is in the First Judicial District, and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all her official acts as such in all court of record and elsewhere; and that her said attestation is in due form, and by the proper officer.

Given under my hand and seal this 26 day of October, 1942, at Albuquerque, Bernalillo County, New Mexico.

ALBERT R. KOOL,
District Judge of the Second Judicial District, sitting in place and stead of Honorable David Chavez, Jr., District Judge. [113]

CERTIFICATE

State of New Mexico,
County of McKinley—ss.

I, Eva Ellen Sabin, Clerk of the District Court in and for said County, in the State aforesaid, do hereby certify that Honorable Albert R. Kool, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same, Judge of the Second Judicial District of the State of New Mexico, sitting for Honorable David Chavez, Jr., Judge of the First Judicial District, of which First Judicial District, the said McKinley County

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

forms a part, duly elected and qualified; that full faith and credit are and of right out to be given to all his official acts as such, in all Court of record and elsewhere.

In Testimony Where I have hereunto set my hand and affixed the seal of said Court, at my office in Gallup, McKinley County, New Mexico, this 22nd day of October, 1942.

EVA ELLEN SABIN

Clerk

By B. MARTINEZ

Deputy [114]

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5414

E. H. YOUNGBLOOD,

Plaintiff,

vs.

S. DYSART,

Defendant.

JUDGMENT

This case having come on to be heard on the 13th day of July, 1938 before the Court sitting without a jury, and the plaintiff being present in person and by his attorney, Harris K. Lyle, Esq., and the

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

defendant being present in person and by her attorney, M. J. McGuinness, Esq., and both parties having offered such evidence, both oral and documentary, as they desired, and the case having been argued and the Court being fully advised in the premises, finds as follows:

1. That the plaintiff is a resident of McKinley County, State of New Mexico.

2. That on or about the 28th day of March, 1937, or a short time prior thereto, the plaintiff was employed by the defendant, S. Dysart, to drill a well on Section Fourteen (14), township Fourteen (14) North, Range Ten (10) West, N.M.P.M., in McKinley County, New Mexico.

3. That the said employment was made by an oral contract between the parties whereby plaintiff agreed to drill the said well for the said defendant upon the said lands, and the defendant agreed to pay the plaintiff on completion of said well the sum of Two (\$2.00) Dollars per foot for the first five hundred (500) feet, and Two and 50/100 (\$2.50) Dollars per foot for everything in excess of five hundred (500) feet, and that said payment was to be made upon the completion of the said well.

4. That thereafter, to-wit, on the 28th day of March, 1937, the plaintiff commenced drilling operations, and continued said operations until, or about until, the 31st day of August, 1937, and at said time the plaintiff had drilled the said well to a depth of seven hundred and one (701) feet. [115]

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

5. That at the said depth of 701 feet a flow of water was brought in.

6. That the plaintiff did no work on said well subsequent to the 31st day of August, 1937.

7. That on the 7th day of September, 1937, the defendant directed the plaintiff to cease all further work on said well.

8. That by reason of the aforesaid contract and the aforesaid drilling, the defendant become indebted to the plaintiff in a total sum of One Thousand Five Hundred and Two and 50/100 (\$1502.50) Dollars.

9. That on August 10, 1937, there was a balance owing to plaintiff on account of drilling 500 feet, the sum of Four Hundred Six and 07/100 (\$406.07) Dollars, being Three Hundred Thirty-six and 57/100 (\$336.57) Dollars, as shown on statement of account, plaintiff's Exhibit 3, plus Sixty-nine and 50/100 (\$69.50) Dollars erroneously charged plaintiff for board; that thereafter there accrued to plaintiff the additional sum of Five Hundred Two and 50/100 (\$502.50) Dollars for drilling the additional two hundred and one (201) feet at \$2.50 per foot, and no part of such amounts were paid except Two Hundred (\$200.00) Dollars, leaving a balance due plaintiff on account of such operations of Seven Hundred and Eight and 57/100 (\$708.57) Dollars, and that said amount is due plaintiff after allowance of all just payments, credits and offsets.

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

10. That thereafter, to-wit, on the 19th day of October, 1937, the plaintiff employed an attorney and filed a claim of lien under the provisions of Chapter 82, Art. 2 of the New Mexico Statutes, 1929 Compilation, and that said claim of lien was duly executed and verified by the plaintiff and recorded in the office of the County Clerk, Ex-Officio Recorder of the County of McKinley, State of New Mexico, on the said 19th day of October, 1937, in Book 2 of Lien Records at Page 439 thereof.

11. That the plaintiff paid to the County Clerk of McKinley County the sum of One and 50/100 (\$1.50) Dollars for recording said lien. [116]

12. That the plaintiff employed an attorney at law, to-wit, Harris K. Lyle, Esq., a member of the Bar of the Supreme Court of the State of New Mexico, to prosecute this action to foreclose the aforesaid mechanics lien, and the plaintiff has incurred an obligation to pay the said attorney a reasonable fee for his services in this cause, and that a reasonable fee for the services of the aforesaid attorney is the sum of Two Hundred and Fifty (\$250.00) Dollars.

13. That the Defendant has not paid the plaintiff the sum of \$708.57, as stated in Finding No. 9 or the sum of \$250.00 as stated in Finding No. 12, or the sum of \$1.50 as stated in Finding No. 11, or any part thereof, and that the total of said items, to-wit, the sum of Nine Hundred and Sixty and

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

07/100 (\$960.07) Dollars is wholly due, owing and unpaid.

14. That the defendant secured a permit from the office of the Geological Survey, a division of the Department of the Interior of the United States of America, for the drilling of the aforesaid well as a water well.

15. That Section Fourteen (14), Township Fourteen (14), North, Range Ten (10) West, N.M.P.M., is required for the full use and enjoyment of the aforesaid well and the water to be produced and which may be produced therefrom and that said Section is owned by the defendant.

16. That the water to be produced from the well drilled by the plaintiff will enhance the value of, and add to the enjoyment and full use of Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M.

17. That the supply of water previously existing on Section 14, Township 14 North, Range 10 West, N.M.P.M. is insufficient for carrying on drilling operations by the defendant on said section, and said water will also increase the supply of water available for cattle which are grazing on said section.

18. That the allegations of the first cause of action on the cross-complaint, insofar as they may differ from the findings hereinbefore made, are not established by a preponderance of the evidence.

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

19. That the defendant and cross-complainant did not instruct the plaintiff and cross-defendant to cease all operations when he should reach the depth of six hundred (600) feet, until after said depth had been exceeded.

20. That there is no evidence to sustain the allegation of the cross-complaint that the defendant and cross-complainant was damaged in the sum of One Thousand Four Hundred and Thirty-seven and 19/100 (\$1437.19) Dollars or in any other sum because of the depth to which the said well was drilled.

21. That there is no evidence to support the allegation of the cross-complaint that the defendant and cross-complainant was damaged in the sum of Five Thousand (\$5000.00) Dollars or in any other sum by reason of the allegations that the plaintiff and cross-defendant refused to keep a log of said well and to furnish the defendant and cross-complainant with weekly reports of progress.

22. That the defendant and cross-complainant was not damaged in the sum of Five Hundred (\$500.00) Dollars or in any other sum by alleged negligence of the plaintiff and cross-defendant in performing the work of drilling said well or in recovering tools belonging to the defendant and cross-complainant which were claimed to have been lost or damaged.

23. That there is no evidence to sustain the alle-

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

gation of the second cross-complaint that the plaintiff and cross-defendant falsely or maliciously or without reason or probable cause or at all, preferred or caused to be preferred on behalf of himself, his agents or workmen, false or fraudulent claims or any other claims for compensation for injuries or for wages to the commissioners respectively of the Workmens Compensation Act and Labor for the State of New Mexico, or that the said plaintiff and cross-defendant had any intention or purpose of embarrassing the defendant and cross-complainant, or that the defendant and cross-complainant was damaged in the sum of One Thousand (\$1000.00) Dollars or in any other sum.

And the Court makes the following Conclusions of Law:

1. That there is due and owing by defendant to plaintiff the sum of Seven Hundred Eight and 57/100 (\$708.57) Dollars, together with interest thereon at the rate of six (6%) per cent per annum from the 31st day of August, 1937, until the date of this judgment, and the further sum of One [118] and 50/100 (\$1.50) Dollars, expended for the filing of a claim of lien, and the further sum of Two Hundred Fifty (\$250.00) as an attorney's fee, and that the plaintiff be entitled to a lien on Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M., lying in McKinley County, New Mexico, to secure the payment of

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

the total sum of Nine Hundred Sixty and 07/100 (\$960.07) Dollars, together with costs of this action, and interest on the sum of Seven Hundred Eight and 57/100 (\$708.57) Dollars, at the rate of six (6%) per cent per annum, from the 31st day of August, 1937, until the date of the judgment in this cause.

2. That the plaintiff is entitled to foreclose the aforesaid lien, and that unless the defendant shall pay the amounts herein found due from the defendant to the plaintiff, together with interest and costs, that the aforesaid Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M., or as much thereof as may be necessary, should be sold according to law to satisfy the aforesaid lien.

3. That the defendant and cross-complaint take nothing by her first cross-complaint filed herein, and that the same should *by* dismissed with prejudice.

4. That the defendant and cross-complaint take nothing by her second cross-complaint filed herein, and that the same should be dismissed with prejudice.

Now Therefore, It Is Ordered, Adjudged and Decreed, that the plaintiff do have and recover of the defendant the sum of Seven Hundred and Eight and 57/100 (\$708.57) Dollars, together with interest thereon at the rate of six (6%) per cent

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

per annum from the 31st day of August, 1937 to the date hereof, to-wit, the sum of Thirty-eight and 97/100 (\$38.97) Dollars, together with the further sum of One and 50/100 (\$1.50) Dollars expended for the filing of the claim of lien, and the further sum of Two Hundred and Fifty (\$250.00) Dollars as an attorney's fee, together with the costs of this action which have been taxed by the Clerk of this Court in the sum of One Hundred and Six and 85/100 (\$106.85) Dollars, making in all the total sum of One Thousand One Hundred and Five and 89/100 (\$1105.89) Dollars. [119]

It Is Further Ordered, Adjudged and Decreed, that the plaintiff do have a lien on Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M., for the satisfaction of the aforesaid judgment.

It Is Further Ordered, Adjudged and Decreed, that, unless the defendant shall pay to the plaintiff the aforesaid sum of Eleven Thousand One Hundred and Five and 89/100 (\$1105.89) Dollars together with interest thereon at the rate of six (6%) per cent per annum from the date hereof until paid, the said Section 14, Township 14 North, Range 10 West, N.M.P.M. or so much thereof as shall be necessary shall be sold according to law to satisfy this judgment and the costs of sale.

It Is Further Ordered, Adjudged and Decreed, that in the event the above described property shall

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

be sold, the plaintiff may become a purchaser at said sale.

Dated this 24 day of August, 1938.

(Signed) IRWIN S. MOISE

District Judge of the Fourth
Judicial District of the
State of New Mexico,
sitting by designation for
the Honorable David Cha-
vez, Jr., Judge of the First
Judicial District of the
State of New Mexico.

Filed Aug. 25, 1938. [120]

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5414

E. H. YOUNGBLOOD,

Plaintiff,

vs.

S. DYSART,

Defendant.

SPECIAL MASTER'S REPORT

Now comes W. M. Bickel, duly appointed special master in the above captioned case, and makes this his report of his acts and doings in the premises.

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

I.

That W. M. Bickel was on the 12th day of May, 1941 duly appointed as special master in the above captioned case; that the said special master published a notice of foreclosure sale for four successive weeks, the first publication being on the 23rd day of July, 1941 and the fourth on the 13th day of August, 1941, in the Gallup Independent, a newspaper of general circulation in the County of McKinley, State of New Mexico, as more particularly appears from the affidavit of A. W. Barnes duly filed in this cause.

II.

That, pursuant to the aforesaid notice, the undersigned did on the 21st day of August, 1941 at the hour of ten o'clock A. M. at the front door of the court house of McKinley County in Gallup, New Mexico offer for sale at public auction to the highest and best bidder for cash, the following described real estate lying, situate and being in the County of McKinley, State of New Mexico, to-wit:

All of Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M.

III.

That the undersigned offered for sale as aforesaid all of the right, title and interest of the plaintiff by virtue of the judgment in the above cap-

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

tioned cause, and that upon the reading of the notice of sale and the offering thereof pursuant to the terms of the notice, the undersigned received no bids for any part of said land less than the entire section; that E. H. Youngblood, plaintiff in the above captioned cause, bid the sum of One Thousand Three Hundred and Thirty-nine and 83/100 (\$1339.83) Dollars; that no other or better bids were received and that upon information and belief your special master states that the aforesaid bid is a fair and proper price for the aforesaid land; that no other and better bid could be received, and that the bid is sufficient to satisfy the judgment of the plaintiff.

IV.

That, pursuant to the aforesaid bid, the undersigned has prepared and executed a special master's deed, a copy of which is hereunto annexed and marked Exhibit "A". [121]

V.

That the costs and expenses of the sale are as follows:

Documentary stamps to be affixed to deed	\$ 1.65
Publication of notice of sale	11.73
Recording of special master's deed	1.50
Special master's fee	20.00

Total\$34.88

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

leaving a balance of One Thousand Three Hundred and Four and 95/100 (\$1304.95) Dollars; that said sum is exactly equal to the judgment of the plaintiff in the sum of One Thousand One Hundred and Five and 89/100 (\$1105.89) Dollars plus interest thereon to the date of the sale in the sum of One Hundred and Ninety-nine and 06/100 (\$199.06) Dollars; that the plaintiff has paid the costs of the sale and has taken credit for the amount of his judgment against the bid, leaving no funds whatever to be disbursed to the defendant.

Wherefore, your special master prays that this Honorable Court may be pleased to enter its order confirming and approving said sale and directing the special master to deliver the deed, a copy of which is hereunto annexed, and discharging your special master from all further obligations in the premises.

(Signed) W. M. BICKEL
Special Master

State of New Mexico
County of McKinley—ss.

W. M. Bickel, being first duly sworn, deposes and says that he is the special master whose name is subscribed to the foregoing report; that he has read the same and knows the contents thereof, and the same is true of his own knowledge except as to those

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

matters stated upon information and belief, and as to those matters he believes it to be true.

(Signed) W. M. BICKEL

Subscribed and sworn to this 21st day of August, 1941, before me,

[Seal] MARY A. LYLE

Notary Public In and For the County of McKinley
and State of New Mexico.

My commission expires: Dec. 9, 1943.

Filed Aug. 23, 1941. [122]

EXHIBIT "A"

SPECIAL MASTER'S DEED

Know All Men by These Presents:

That Whereas, the undersigned, W. M. Bickel, was on the 12th day of May, 1941 duly appointed special master in a certain cause entitled E. H. Youngblood, plaintiff, against S. Dysart, defendant, pending in the District Court of the State of New Mexico, First Judicial District in and for the County of McKinley, and numbered 5414 on the records of said court, and,

Whereas, the special master did, pursuant to the terms of the aforesaid order publish notice according to law that he would on the 21st day of August, 1941 at the hour of ten o'clock A. M. at the front door of the court house of McKinley County in Gallup, New Mexico offer for sale at public auction

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

to the highest and best bidder for cash all of the following described real estate, to-wit:

All of Section Fourteen (14), Township Fourteen (14) North, Range Ten (10) West, N.M.P.M.

and,

Whereas, the plaintiff E. H. Youngblood was the highest and best bidder at said auction and did offer to pay for said premises the total sum of One Thousand Three Hundred and Thirty-nine and 83/100 (\$1339.83) Dollars, and,

Whereas, no other and better bid could be secured, and the special master has reported the foregoing facts and circumstances to the above entitled court and the court has by order approved and confirmed the actions of the special master and has ordered and directed him to deliver this deed to E. H. Youngblood;

Now Therefore, I, W. M. Bickel, as special master acting in pursuance of and by virtue of the aforesaid judgment and order confirming the sale duly made and entered in the records of the District Court of the State of New Mexico in and for the County of McKinley, in consideration of the sum of One Thousand Three Hundred and Thirty-nine and 83/100 (\$1339.83) Dollars to me in hand paid by E. H. Youngblood of Gallup, New Mexico, the receipt whereof is hereby confessed

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

and acknowledged, do hereby bargain, sell, remise, release and forever quitclaim unto the said E. H. Youngblood all those certain lots or parcels of real estate lying, situate and being in the County of McKinley, State of New Mexico, and more particularly described as follows:

All of Section Fourteen (14) Township Fourteen (14) North, Range Ten (10) West, N.M.P.M.

To Have and to Hold, the aforesaid premises and all of it, with all the rights, easements and appurtenances thereunto belonging, unto the said E. H. Youngblood, his heirs and assigns, to his and their own use forever.

And I, the special master, for myself, my heirs, executors and administrators, do covenant with the aforesaid E. H. Youngblood, his heirs and assigns, that the aforesaid premises are free from any and all encumbrances made or created by me and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said E. H. Youngblood, his heirs and [123] assigns, that the aforesaid premises are free from any and all encumbrances made or created by me and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said E. H. Youngblood, his heirs and assigns, forever against the lawful claims and demands of all persons claiming by, through or under me, but against none other.

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

In Witness Whereof, I have hereunto set my hand and seal as special master this 21st day of August, 1942.

(Signed) W. M. BICKEL,
Special Master.

State of New Mexico,
County of McKinley—ss.

On this 21st day of August, 1941, personally appeared before me W. M. Bickel, to me known to be the person described in and who executed the foregoing Special Master's Deed, and acknowledged that he executed the same as special master and as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

MARY A. LYLE,
Notary Public in and for the County of McKinley
and State of New Mexico.

My commission expires: Dec. 9, 1943 [Seal] [124]

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5414

E. H. YOUNGBLOOD,

Plaintiff

v.

S. DYSART,

Defendant.

ORDER APPROVING SALE

This case having come on to be heard this 22 day of August, 1941 upon the report of the special master duly filed herein, and the Court being fully advised in the premises, finds as follows:

That the allegations of the special master's report are and each of them is true and correct, and the Court adopts the same as the findings of fact in this matter; that the sum of One Thousand three Hundred and Thirty-nine and 83/100 (\$1339.83) Dollars is a fair and proper price for the land; that no other and better bid could be received; that the expenses of the sale as reported by the special master are just and proper.

And the Court concludes that the special master's report should be approved and confirmed, and that the special master should be directed to de-

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

live the deed and to apply the proceeds of the sale in payment of the costs and in full satisfaction of the judgment.

Now Therefore, It Is Ordered, Adjudged and Decreed, that the acts and doings of the special master and the sale conducted by him be and they hereby are approved, and the special master is hereby ordered and directed to deliver to E. H. Youngblood the original special master's deed, a copy of which is annexed to the report of the special master.

It Is Further Ordered, Adjudged and Decreed, that the special master apply the proceeds of the sale as follows:

Total price	\$1339.83
Documentary stamps for	
deed	\$ 1.65
Publication of notice of sale	11.73
Recording of deed.....	1.50
Special master's fee.....	20.00
Credit against judgment in	
full judgment	1105.89
Interest to date of sale..	199.06

	\$1339.83	\$1339.83
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It Is Further Ordered, Adjudged and Decreed, that, there being no further moneys to disburse,

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

the special master is hereby discharged of and from any and all further liability in the premises.

IRWIN S. MOISE,

Judge of the Fourth Judicial District sitting by designation for and on behalf of the Honorable David Chavez, Jr., Judge of the First Judicial District of the State of New Mexico.

Filed Aug. 23, 1941. [125]

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5414

E. H. YOUNGBLOOD,

Plaintiff

v.

S. DYSART,

Plaintiff?

ORDER APPOINTING SPECIAL MASTER

This case having come on to be heard this 12 day of May, 1941 upon the motion of the plaintiff for the appointment of a special master to conduct the sale of the property to satisfy the judgment and lien duly established by the final decree in this case, and it appearing to the Court that W. M. Bickel is a fit and proper person to act as

Petitioning Creditors' Exhibit No. 2
for Identification—(Continued)

special master, and the Court being fully advised in the premises;

Now Therefore, It Is Ordered, Adjudged and Decreed, that W. M. Bickel of Gallup, New Mexico be and he hereby is appointed and designated as special master, with power to advertise and sell property which has been made subject to the lien of the plaintiff in the above captioned cause.

IRWIN S. MOISE

District Judge of the Fourth Judicial district of the State of New Mexico, sitting by designation for the Honorable David Chavez, Jr., Judge of the First Judicial Distfict of the State of New Mexico.

Filed May 13, 1941. [126]

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

the special master is hereby discharged of and from any and all further liability in the premises.

IRWIN S. MOISE,

Judge of the Fourth Judicial District sitting by designation for and on behalf of the Honorable David Chavez, Jr., Judge of the First Judicial District of the State of New Mexico.

Filed Aug. 23, 1941. [125]

In the District Court of the State of New Mexico,
First Judicial District in and for the
County of McKinley

No. 5414

E. H. YOUNGBLOOD,

Plaintiff

v.

S. DYSART,

Plaintiff?

ORDER APPOINTING SPECIAL MASTER

This case having come on to be heard this 12 day of May, 1941 upon the motion of the plaintiff for the appointment of a special master to conduct the sale of the property to satisfy the judgment and lien duly established by the final decree in this case, and it appearing to the Court that W. M. Bickel is a fit and proper person to act as

Petitioning Creditors' Exhibit No. 2

for Identification—(Continued)

special master, and the Court being fully advised in the premises;

Now Therefore, It Is Ordered, Adjudged and Decreed, that W. M. Bickel of Gallup, New Mexico be and he hereby is appointed and designated as special master, with power to advertise and sell property which has been made subject to the lien of the plaintiff in the above captioned cause.

IRWIN S. MOISE

District Judge of the Fourth Judicial district of the State of New Mexico, sitting by designation for the Honorable David Chavez, Jr., Judge of the First Judicial Distfict of the State of New Mexico.

Filed May 13, 1941. [126]

In the District Court of the United States for the
Southern District of California, Central Division

In Bankruptcy

No. 38877-M

In the Matter of

STELLA DYSART, Individually, and STELLA DYSART also doing business as the Ambrosia Club and the Mutual Land Owners Limited,

Alleged Bankrupt.

FINDINGS, CONCLUSIONS AND
JUDGMENT OF DISMISSAL.

The above entitled proceedings, being an involuntary petition of creditors and intervening creditors against the above named alleged bankrupt, coming on regularly to be heard before me, the Honorable Leon R. Yankwich, the undersigned judge, for trial, the demand heretofore made by the alleged bankrupt for a jury in the above entitled matter having been withdrawn in open court, and a jury having been waived by the petitioners and by the alleged bankrupt in open court, on the 4th day of November, 1942, at 10 A.M. thereof, the petitioners being represented by their attorneys, Rupert B. Turnbull and L. H. Phillips, and the alleged bankrupt being represented by her attorneys, Hiram E. Casey and S. Bernard Wager, the court proceeded to hear the said matter.

Thereupon the petitioners offered in evidence an authenticated copy of the judgment and executions,

notice of [127] sale, Sheriff's return of sales, and order of court approving Sheriff's sales in the matter of Mary T. Christensen, plaintiff, vs. S. Dysart, et al., which said matter was an action filed by the said Mary T. Christensen in the First Judiciary District Court of the County of McKinley, in the State of New Mexico, and numbered therein No. 5134. The petitioners announced that the purpose of the offer of said authenticated documents was to prove the acts of bankruptcy alleged in the petitions on file in this bankruptcy proceeding. It was stipulated by and on the behalf of the petitioners herein and of the alleged bankrupt, that at the date of the docketing of the judgment set forth in the said exhibit so offered, to-wit: the 22nd day of March, 1937, that the law of the State of New Mexico made the judgment a lien on any real property of the defendants in the County of McKinley, State of New Mexico. An objection on behalf of the alleged bankrupt to the introduction of the said exhibit so offered by the said petitioners was sustained.

The said petitioners offered an authenticated copy of the judgment, execution, Sheriff's return of sale, and court's order approving Sheriff's sale, and proceedings in the matter of E. H. Youngblood vs. S. Dysart, which had been filed in the First Judiciary District Court of the County of McKinley, State of New Mexico, and numbered therein No. 5414. An objection was made to the said offer on behalf of the alleged bankrupt, and the court admitted the said authenticated documents for the sole purpose of proving and showing that at the date of the pro-

curement of the said judgment in the last aforesaid action, the said alleged bankrupt, S. Dysart, was the owner of real property that stood in her name in the County of McKinley, State of New Mexico.

The petitioners then made an offer of proof to prove that each and every petitioning creditor set forth in the original petition filed herein on the 5th day of July, 1941, [128] and each and every intervening petitioning creditor named and set forth in the petition of creditors to intervene, and supplemental involuntary petition of creditors filed herein on the 29th day of July, 1941, and every intervening petitioning creditor named and set forth in the petition of creditors to intervene, and supplemental involuntary petition of creditors filed herein on the 17th day of October, 1941, had provable claims against the said alleged bankrupt at the time and in the amounts set forth in the aforesaid petitions, and further offered to prove that at the times set forth in the said petitions, the said petitioning and intervening petitioning creditors had provable claims against the said alleged bankrupt in the sum in excess of Five Hundred (\$500.00) Dollars, which were past due and unpaid, and that at the times set forth in the said petitions the said bankrupt owed debts in excess of One Thousand (\$1,000.00) Dollars, and further offered to prove that at all of the times set forth and mentioned in the said petitions and at the dates of the alleged acts of bankruptcy that the said alleged bankrupt was insolvent. The said alleged bankrupt thereupon resisted the offers of proof, which said resistance was

sustained by the court and the offers of proof denied.

CONCLUSIONS OF LAW

As a conclusion the court therefrom herewith decides and determines that the said alleged act of bankruptcy presented by the petitioners herein is not an act of bankruptcy as provided by the National Bankruptcy Act and its amendments, and that the said petitions of the said petitioning creditors and the intervening petitioning creditors as filed herein should be each of them dismissed.

Wherefore by reason of the foregoing, it is ordered, adjudged and decreed that the petitions of the petitioning creditors filed herein on the 5th day of July, 1941, the 29th [129] day of July, 1941, and on the 17th day of October, 1941, be and the same are, and each of them are hereby dismissed with costs to the alleged bankrupt.

It Is So Ordered.

Dated: November 7th, 1942.

LEON R. YANKWICH

United States District Court
Judge.

Approved as to form

RUPERT B. TURNBULL &

L. H. PHILLIPS

By RUPERT B. TURNBULL

Attorneys for Petitioners.

[Endorsed]: Filed Nov. 7, 1942. [130]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Stella Dysart, Bankrupt, and to Hiram E. Casey, and S. Bernard Wager, Attorneys for Bankrupt, and to the Clerk of the above entitled Court:

You and each of you Will Please Take Notice that the petitioning creditors and the intervening petitioning creditors, and each of them, in the above entitled matter, is appealing, and does hereby appeal from the judgment of dismissal in the above entitled matter, the said dismissal being entitled "Findings, Conclusions and Judgment of Dismissal", and being made on or about the 7th day of November, 1942, and entered on or about the 7th day of November, 1942, said judgment having been signed by the Honorable Leon R. Yankwich, Judge of the United States District Court, whereby the bankruptcy proceedings herein, as instituted by the original petitioning creditors and joined in [131] by the intervening petitioning creditors, was dismissed.

Dated: Los Angeles, California, November 19, 1942.

L. H. PHILLIPS and
RUPERT B. TURNBULL

By L. H. PHILLIPS

Attorneys for the Petitioning
Creditors and the Intervening
Creditors.

Mailed copy to attorneys for alleged bankrupt
11/24/42.

[Endorsed]: Filed Nov. 23, 1942. [132]

[Title of District Court and Cause.]

NOTICE TO THE CLERK OF THE COURT OF
THE NAMES AND ADDRESSES OF THE
PERSONS ENTITLED TO NOTICE OF
APPEAL.

We have this day filed our Notice of Appeal in
this matter. The persons of record entitled to No-
tice of Appeal are:

Hiram E. Casey, Room 535 Rowan Building, 5th
& Spring Sts., Los Angeles, California, as one of
the attorneys for the bankrupt;

S. Bernard Wager, Room 1127 Pacific National
Building, 315 West 9th Street, Los Angeles, Cali-
fornia, as one of the attorneys for the bankrupt.

Dated this 19th day of November, 1942.

RUPERT B. TURNBULL and
L. H. PHILLIPS.

By L. H. PHILLIPS,

Attorneys for Petitioning
Creditors and Intervening
Creditors.

Received copy of the within Notice this 23 day
of Nov. 1942 at 10:50 A. M. o'clock.

HIRAM E. CASEY and
S. BERNARD WAGER,
Attorneys for Bankrupt.

[Endorsed]: Filed Nov. 23, 1942. [133]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That we, John Frear, John S. Cross, Valeria C. Painter, Hugo Von Segerlund, Alice Von Segerlund and Florence Kee Brown, principals, and The Aetna Casualty and Surety Company, a corporation, as surety, are held and firmly bound unto Stella Dysart, jointly and severally, in the sum of Two Hundred Fifty (\$250.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our administrators, successors and assigns, jointly and severally by these presents,

Whereas, a judgment was entered in the above entitled proceedings by the District Court of the United States for the Southern District of California, Central Division on the 7th day of November, 1942, dismissing the bankruptcy proceeding herein, to wit, In the Matter of Stella [138] Dysart, Bankrupt, from which order the petitioning creditors and intervening petitioning creditors have perfected their appeal to the United States Circuit Court of Appeal, Ninth Circuit.

Whereas, under the law, it is required that appellants give their bond on appeal in the sum of Two Hundred and Fifty (\$250.00) Dollars,

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect an answer on costs, if they may fail to make said appeal good, then

this obligation shall be void, otherwise the same shall be and remain in full force and effect; that in case of default or contumacy on the part of the principals or surety, the Court may upon notice to them of not less than ten days proceed summarily and render judgment against them or either of them, in accordance with their obligation, and award execution thereon.

Sealed with our seals and dated this 20th day of November, 1942.

JOHN FREAR,
JOHN S. CROSS,
VALERIA C. PAINTER,
HUGO VON SEGERLUND,
ALICE VON SEGERLUND and
FLORENCE KEE BROWN.

By L. H. PHILLIPS,
Attorney of Record.

THE AETNA CASUALTY AND
SURETY COMPANY.

By F. X. SCHOEFER,
Resident Vice President.

Attest: J. M. CLARK,
Resident Assistant Secretary.

State of California,
County of Los Angeles—ss.

On this 20th day of November, in the year nineteen hundred forty-two, before me, C. A. Akin, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared F. X. Schoefer, known to me to be the Resident Vice-

President and J. M. Clark, known to me to be the Resident Assistant Secretary of The Aetna Casualty and Surety Company, the corporation which executed the within and annexed instrument and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

C. A. AKIN,

Notary Public in and for said Los Angeles County,
State of California.

Notary Public in and for the County *to* Los Angeles,
State of California.

My Commission Expires February 21, 1943.

State of California,
County of Los Angeles—ss.

On this 20 day of November, A.D. 1942 before me, a Notary Public in and for said County and State, personally appeared L. H. Phillips known to me (or proved to me on the oath of), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID SCHWARTZ,

Notary Public in and for said County and State.

The within bond, given by and on behalf of the appellants, petitioning creditors and intervening petitioning creditors herein, is hereby approved, and this approval shall and does constitute a permission on the part of this Court in allowing said appeal.

Dated this 23rd day of November, 1942.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within Cost Bond this 23 day of Nov. 1942, 10:50 A. M.

HIRAM E. CASEY and
S. BERNARD WAGER,
Attorneys for Bankrupt. [140]

[Endorsed]: Filed Nov. 23, 1942.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
APPELLANT MAY FILE RECORD ON
APPEAL.

Good cause appearing therefor and it appearing to the Court that the Court Reporter and Clerk of Court herein have not filed Transcript of Reporter's Record in this proceeding,

Now Therefore It Is Ordered that the Appellant, the Petitioning Creditors and the intervening Petitioning Creditors and each of them may

have to and including the 7th day of January, 1943, within which to file with the Clerk of the United States Circuit Court of the Ninth Circuit the record on appeal herein.

Dated this 7th day of December, 1942.

LEON R. YANKWICH,
District Judge.

[Endorsed]: Filed Dec. 7, 1942.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 145, inclusive, contain full, true and correct copies of Involuntary Petition by Six Creditors; Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors (William Pietsch et al); Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors (W. H. Borton et al); Answer of Stella Dysart, et al., to Involuntary Petition by Six Creditors; Answer of Stella Dysart, et al., to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors William Pietsch, et al; Answer of Stella Dysart, et al., to Petition of Creditors to Intervene and Supplemental Involuntary Petition by Creditors W. H. Borton, et al.; Bill of Particulars to Make More

Certain; Petitioning Creditors' Exhibits 1 and 2 for Identification; Findings, Conclusions and Judgment of Dismissal; Notice of Appeal; Notice to the Clerk of the Court of the Names and Addresses of the Persons Entitled to Notice of Appeal; Statement of Points on which Appellants Intend to Rely; Cost Bond on Appeal; Designation by Appellants of Contents of Record on Appeal; Order extending time to Docket Appeal and Request and Designation by Appellee for Additional Contents of Record on Appeal which, together with Original Reporter's Transcript transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$30.80 which amount has been paid to me by Appellants.

Witness my hand and the seal of the said District Court this 29 day of December, A. D. 1942.

[Seal]

EDMUND L. SMITH,

Clerk.

By THEODORE HOCKE,

Deputy Clerk.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS ON TRIAL

Appearances:

Hiram E. Casey, Esq., and S. Bernard Wager,
Esq., for Stella Dysart, respondent.

Rupert B. Turnbull, Esq., and L. H. Phillips,
Esq., for petitioning creditors.

Los Angeles, California,
Wednesday, November 4, 1942

10 A. M.

The Court: Are there any ex parte matters?
(No response.)

Mr. Casey: I would like to have the record show my association in this case, your Honor. I filed it this morning in the Dysart case.

The Court: On which side? For the respondent?

Mr. Casey: For the respondent.

The Court: All right.

The Clerk: Jury trial in the case of Stella Dysart, alleged bankrupt, No. 38,877-Bankruptcy.

Mr. Turnbull: Ready for the petitioning creditors and the intervening creditors.

Mr. Casey: Ready for the respondent.

The Court: Do you gentlemen want a jury?

Mr. Casey: Yes.

The Court: I am frank to say, gentlemen, it is going to be very difficult to submit all the compli-

cated issues that are involved with these cross references to a jury.

Mr. Casey: May we have just a short conference?

The Court: I have read the pleadings here. They are so complicated that even Judge McCormick had to appoint a master to thrash them out and see who is claiming what and which, a lot of claims by women, \$100, \$50; and some of them dating away back for years and then a lot of interveners, two [2*] separate sets.

I am not interested in the matter, but it does seem to me that a complicated case like this would be very difficult to submit to a jury. I have submitted more complicated matters than this; however, ultimately where a person has committed an act of bankruptcy it is a matter of law.

Mr. Casey: May I have this suggestion from the court: In the event a jury is waived, would the matter be tried by the court and not be referred to a master?

The Court: I never refer to a master. I don't like masters, as you well know. I don't like masters, whether they are referees in bankruptcy or not. I am very jealous of my prerogative as a Judge. I don't like anybody to take it.

If a jury is waived, I shall proceed to try the case now. It is the first order of business and the only order of business I have.

Mr. Casey: We have no objection to the referee.

* Page numbering appearing at top of page of original Reporter's Transcript.

The Court: No, I don't do that. I don't believe in masters. I have told you before that I don't believe in masters and have never changed my attitude since I went on this bench. I never use masters except to find an accounting. The few times I have done it I have had to do the work over again, with all respect to the masters and to the other Judges using them.

Mr. Casey: May it please your Honor, we are prepared on [3] behalf of the respondents at this time to waive the jury. Of course, in view of what your Honor has stated, it will be tried by the court, if we file a written waiver.

The Court: Of course, this is not a criminal case. It is a civil case. What do you say, Mr. Turnbull?

Mr. Turnbull: We did not demand a jury.

The Court: I know you did not.

Mr. Turnbull: And we are not demanding one now.

The Court: All right. Then the jury——

The Clerk: Is excused until notified.

The Court: The respondents have waived the written request for a jury heretofore made. The cause will be tried without a jury. I will order a reporter, and you gentlemen will divide the costs. The members of the panel who are here will be excused until further notice. One gentleman whose name I forget, the juror who wanted to discuss with me the possibility of being excused and to whom I told to go to Judge McCormick will now go to Judge McCormick who empanels the jury

and state his troubles to him or his secretary and abide by whatever decision is made there. You gentlemen may withdraw.

All right, gentlemen, let's proceed.

Mr. Turnbull: Your Honor has read the pleadings. There is no necessity for our making a statement.

The Court: Yes, I have read the pleadings and I have read the decision of the Special Master to whom the question [4] of sufficient pleading was referred and the order of Judge McCormick.

Mr. Turnbull: There was a previous bankruptcy proceeding which resulted in adjudication by the Circuit Court and reverse of it by the United States Circuit Court of Appeal on the ground that the act of bankruptcy was not completely proven. I make that statement because some of the records that are being brought here from New Mexico today will be complete, whereas heretofore they were not.

The Court: All right.

Mr. Turnbull: The petitioning creditors and the intervening creditors at this time offer in evidence an exemplified copy of a record of a proceeding in which Mary T. Christensen is plaintiff and judgment creditor and in which the alleged bankrupt, Stella Dysart, was defendant. That record is one bearing the certificate of Eva Ellen Saben, the clerk of the District Court in and for the County of McKinley, New Mexico; the certificate of District Just Kool, and the certificate of Eva Ellen Saben, the clerk of the court, that the Judge is

the Judge, which certificates on the part of the clerk are under seal of that court and which record, so certified, consists first of a judgment in favor of Mary T. Christensen against Stella Dysart, as appears on its face, a series of executions, particularly one we are interested in here, however, being the one containing the sheriff's levy and the sale of which was had [5] on the 7th of July, 1941.

The Court: Is that in support of Paragraph 6 of your original petition?

Mr. Turnbull: I don't know the number. It is the one of Mary T. Christensen's judgment.

The Court: Yes.

Mr. Turnbull: It appears that the procedure in New Mexico is that after the sheriff makes a sale he reports that sale to the court, and the court makes, and apparently in this case made, an order approving the sale. But the record here being offered is the judgment, the execution of 1941, with respect to the sale of the 7th of July, 1941, and the sheriff's bill of sale and the order approving the sale as made by the Judge of the court.

Mr. Casey: To which we object upon the grounds that the offer is irrelevant, incompetent, immaterial. The judgment shows upon its face that it became a judgment, I think, either the 22nd of February, 1937, docketed March 27, 1937; therefore, became a lien upon the real property of the respondent and, therefore, the act of bankruptcy is more than four months prior to the institution of these proceedings. That was one of the points made in the Circuit Court decision, the procurement of the lien

being the date of demarcation and not the date of the subsequent sale; on the further ground that the so-called authenticated record now offered is not complete, does not contain the prior executions showing that they were prior executions; therefore, [6] that the alleged act of bankruptcy is not within the four-month period, the point being a sale made on May 5, 1941, on a judgment that was secured by a lien and by prior executions is not an act of bankruptcy and cannot be;

On the further ground, as I recall—I only saw the record this morning, and I may be mistaken—that sale is reported sometime in August and I think the sale plead as an act of bankruptcy was May the 5th or July the 7th.

Mr. Turnbull: If your Honor please, I am not responsible for the pleading in the other case. I know what it is, and the point raised in that case is not the point raised here. The act of bankruptcy in the instant pleading is the failure of the alleged bankrupt to cause to be removed. The lien of a writ of execution within at least five days prior to a sale is, according to the language of the statute, "A sale or other disposition thereof."

This is personal property, not real property, that is being sold, your Honor, that we are interested in.

The Court: Let us read the section again.

Mr. Turnbull: Yes, your Honor. It is under Section Fourteen of the Bankruptcy Act.

Mr. Casey: Section Fourteen? I think you are wrong. That is "Discharges."

Mr. Turnbull: Section Fourteen is "Discharges." It is Section Twelve.

Mr. Casey. There is no Section Twelve. [7]

The Court: I remember the section because I read it recently.

Mr. Turnbull: Section Twelve was repealed.

Mr. Casey: It is Section Three.

Mr. Turnbull: Section Three?

The Court: That is the beginning of the definition section, defining it. That is it.

Mr. Turnbull: No. It is subsection 3 of Section Three.

The Court: That's right.

Mr. Turnbull: Chapter III.

The Court: That is it.

Mr. Turnbull: That is the 30-section. It says: " * * * or at least five days before the date set for any sale or other disposition of property * * * "

Now, I will make the statement, your Honor, that this exemplified record shows the sale personally, and that is the way it is alleged in the petition. Incidentally, it does sell real property; but that is a part of the record here.

The Court: Let me look at the exemplified record.

Assuming, Mr. Casey, in the absence of a showing to the contrary, that the law of New Mexico is the same as the law of California, the lien of the judgment in California would not run as to personal property until levy. It is only as to real property standing in the name of the judgment debtor that automatically the judgment works in

the county in which it is rendered. Even as to the property outside of [8] the county you are required to record in another county a copy of the judgment or an abstract of the judgment before the lien attaches.

The sale here is apparently personal property, and no lien attaches automatically through the entry of judgment in the absence of a levy. If there was a levy, then, of course, it attaches at the time of levy.

Mr. Casey: That is correct, the further point being made at the time of the issuance and levy of this execution in 1941—I don't know whether the date is May 5th or July 7th—this involuntary was filed on the 5th of July.

Mr. Turnbull: That is right. The original petition was filed on the 5th, and the allegation is that the sale was set for the 7th and that within the 5-day limit the respondent had not set it aside. That is the language of the statute, "Had not made any other disposition," and the property was going to sale on the 7th.

Mr. Casey: I don't know what the record shows.

Mr. Turnbull: The record shows that the sale was had on the 7th by the sheriff.

The Court: The notice of execution sale given by the sheriff is dated the 10th day of June, 1941. It shows publication July 11, 18 and 25th; it shows notice that a sale would be held on the 7th day of July, 1941.

Mr. Casey: Then the point in addition to that is made, at the time of the issuance of that execu-

tion that judgment [9] was already a lien upon real property of this respondent in the County of McKinley, State of New Mexico, by virtue of the docketing of the judgment in the office of the County Clerk.

The Court: But there was no sale of real property. It could not be a sale of personal property.

Mr. Casey: No. But if it is a lien, if the judgment is secured by a lien and then is not taken care of by discharge in some way or other, that is an act of bankruptcy.

The Court: Yes, I understand that. I read the case, a very interesting case, decided by Judge McColloch. I think it is in 88 Fed. (2d). In that case a lien of attachment was run through the case in the Circuit Court of Oregon which is like our Superior Court, and the defendant, the alleged bankrupt, succeeded in beating the case. I mean, judgment for the defendant automatically discharged the lien. Judge McColloch under the circumstances felt that the section should read "a valid execution" but the Circuit said that it does not make any difference whether the execution is valid or not; if it was suffered while he was insolvent, the fact that he was ultimately the victor in the case didn't affect him. I think you know the case.

Mr. Casey: Yes, I know the case. The point I have is this: Christensen here in 1937 procured a judgment against respondent Dysart. That judgment became a lien upon property of a greater value than the amount of the judgment. [10] That

created a secured judgment or claim of Christensen.

Now, then, after she procured that judgment, after Mrs. Christensen procured her judgment in 1937, she issued an execution and collected part of it.

I say that the act of bankruptcy, which petitioning creditors can take advantage of, was the procurement on the first date of the lien of the judgment in 1937 and that issuance of execution more than four months subsequent to the docketing of that judgment does not and cannot create an act of bankruptcy.

The Court: Well, that alternative section would become meaningless.

Mr. Casey. That's right.

The Court: It would become meaningless.

Mr. Casey: Well, it wouldn't become meaningless.

The Court: It says: “* * * or at least five days before the date set for any sale or other disposition of such property * * *”.

Mr. Casey: We had this in court in the Southern District in the case of Eustace with which I am familiar. That took place 10 or 12 years ago. In other words, where there is an attachment on the 1st of January and six or seven months later there is a judgment and a month or two later a sale under that judgment, the petitioning creditors cannot take the failure to dispose by sale as an act of bankruptcy because they would have to take

the levy of the [11] attachment which was more than four months prior.

The Court: Who decided that?

Mr. Casey: Judge McCormick.

The Court: Did he write an opinion?

Mr. Casey: I think not, but it was affirmed in a comparatively recent case in this Circuit, I think. It is the Northwest Pulp & Paper Co. v. Finish Luth B. Concern in 51 Fed. (2d) 340.

The Court: All right. Let us take a look at it.

Mr. Turbull: I suggest that Mr. Casey's entire argument is based on a set of facts that do not appear here. Nothing appears that he got a lien against certain real property in 1937.

Mr. Casey: You won't deny it, will you?

The Court: Let me take a glance at the record. The date of the judgment does not seem to appear anywhere.

Mr. Casey. Except in the opening paragraph.

The Court: Is it?

Mr. Casey: It simply states when it came on for trial.

The Court: In other words, that does not mean anything, without the jury.

Mr. Casey: Doesn't that indicate it was tried in the February term?

The Court: It says the February term. That's right.

Mr. Casey: Yes.

The Court: 1937. "Hereby commanded to levy * * *". [12] Then we find the certificates.

Mr. Casey: May I ask, How much is the amount?

The Court: Levy, \$3,565.

Mr. Casey: What was the date of that execution?

The Court: It is dated the 8th of September, 1937.

Mr. Turnbull: That is not the execution which was levied in the personal property, however.

The Court: No. Well, we will have to find out. There is more than one writ.

Mr. Turnbull: There are more than one writ in the records.

Mr. Phillips: There are three, your Honor.

The Court: And there are certificates of service, two certificates of service. Then we have a second writ dated 1939.

Mr. Turnbull: That is not the writ, either.

Mr. Casey: That is to make \$245.

Mr. Phillips: That is an accumulation.

The Court: \$245 plus costs.

Mr. Casey: Yes.

Mr. Turnbull: It is the last one there.

The Court: November 19, 1939. And then the alias writ filed June 11, 1941, which is for \$974.17.

Mr. Turnbull: It is my understanding that that is the writ that was levied, that is, the writ the return was made on; and that is the return on which the Judge makes the order [13] approving the sale.

The Court: I see. All right, let us check that. This is dated by the clerk the 5th day of May, 1941, filed June 11, 1941. He makes the return as of

the 6th day of June, 1941. Here is the return: “* * * that I received writ of execution on the 5th day of May, 1941; served the same by delivering a copy to H. Eaves, caretaker, for defendant Stella Dysart * * *”.

That is the 6th day of May. He certifies that he received the writ on the 6th day of May, 1941; that he served the same and took the property into possession.

Well, let me see. He took possession on the 6th day of June, 1941, and makes a certificate as of the 9th day of June. Then he makes an amended return as of the 17th by including certain things at that time. He levied on the casing on three certain wells.

That would be a part of the realty. Casing in a well would ordinarily be a part of the realty. Then follows the notice of execution sale which is dated the 10th day of June. Notice of sale would be had on the 7th of July. Then comes the report of the sale that he sold it on the 7th of July, 1941. We have a bill of sale dated July 7th for the personal property. We have an order approving the sale by the court as of July 12, 1941. Then the sheriff's return shows the notice. And then we have a report of the second sale of the casing in place. The recovery was to be made by the buyer. [14] Then there is a bill of sale on the casing in the three wells which is dated August 14, 1941. That sale is approved as of August 18, 1941.

Now, those are all the dates.

Mr. Casey: My point being, your Honor, that

this judgment became something that had to be taken care of within four months or within 30 days' procurement of the lien. The lien was procured in the February term of 1937.

Now, that having been a lien then, having placed this judgment creditor in a preferential position in reference to the other unsecured creditors of the same class, it then, under the Bankruptcy Act, became the duty of the debtor to take care of that preferential position that Mrs. Christensen was placed in within 30 days of the procurement of the lien; in other words, within 30 days of the February term of 1937. The creditors having passed up that position permitted Mrs. Christensen to procure a lien upon real property, not this personal property thereafter sold, to procure a lien upon real property, which gave her judgment a preferential position. They cannot wait another 30 days or three or four years; and instead of levying upon the land upon which she has the lien, levy upon personal property and notice for sale and then take that sale of that personal property as an act of bankruptcy. In other words, this judgment is a secured claim and is in a preferential position. It cannot be upset by bankruptcy, by virtue of the lien that was [15] procured more than four months prior to bankruptcy, in other words, in 1937.

What they are attempting to do—the Circuit Court mentioned that in its opinion, not in this particular case, in this litigation—that while counsel hadn't pointed out and argued that the New Mexico statute made the judgment in the court and

automatically on real property, it appeared in that case that there was real property; then, therefore, the act of bankruptcy was more than four months subsequent, or, that the petition was more than four months, and the commission of the act of bankruptcy was procurement of the judgment.

The Court: That would be the law of the case if it so held. I probably read it at the time, but it does not stand out in my mind. I agree with you that this decision to which you called my attention does hold that the starting point is the judgment, but the court there was dealing with the law of Oregon on which the judgment became such a lien.

Mr. Casey: The citation of that other decision is 118 Fed. (2d) 482.

The Court: All right. Let us take a look at it. We might as well do it now.

Mr. Turnbull: May I be heard just a moment, your Honor?

The Court: Yes. I was just trying to find out what it is all about. I did not get the point at first.

Mr. Turnbull: Counsel is very inconsistent. He argued in the Circuit Court of Appeals. There were two acts of [16] bankruptcy in this Section Three, subdivision 3. The first act of bankruptcy was the 30-day lien, and he claimed that counsel in that other case, the other bankruptcy case which the Circuit passed on, did not prove that there had been a levy upon personal property which had not been set aside within five days. Therefore, that was a separate act of bankruptcy.

I am responsible for this pleading—I wasn't re-

sponsible for the other pleading—and in the second subdivision of subdivision 3 of Section Three that is the way it is pleaded, that it is the failure to remove that lien by a sale or other disposition of the property within the 5-day period; and when four days runs after that levy, that act ripens; it has nothing to do with the 30-day lien on real property. They might never have levied on personal property, but they did levy on personal property. The judgment entered did not set it aside within the five days or make any other disposition, and it went to sale. That sale then ripened, and if it had run four months it would have been a preference. That is where the Bankruptcy Act says that you have got to take advantage of that sale within the four months.

Mr. Casey: Might I call your Honor's attention that in reading that case there are two footnotes, I think, by the Justice.

In answering Judge Turnbull right now, in the Pulp case the court states distinctly contrary to what Judge Turnbull [17] thinks the law is; and that is:

“* * * If the lien is created by an attachment, which attachment is followed by a judgment lien, it is the date of the attachment lien which creates the acts of bankruptcy * * *”

It is the date of the attachment.

Mr. Turnbull: I concede that that is the law.

Mr. Casey: The date of the judgment lien——

Mr. Turnbull: I concede that is the law.

The Court: Just a minute.

Mr. Casey: “* * * This becomes of vital importance under either the 5 or the 30-day requirement of the Act.”

The Court: You are reading from the——

Mr. Casey: The Northwest Pulp.

The Court: The Northwest Pulp case?

Mr. Casey: Yes.

Mr. Turnbull: Of course, your Honor, when there is an attachment and later an execution levy there is a merger of that lien, there isn't any doubt. But nobody levied on personal property until the alias execution was issued.

Now, a general creditor has no right, no lien on personal property until he levies on it, until he sells it.

Mr. Casey: But this creditor was not a general creditor; it was secured by her judgment lien.

Mr. Turnbull: And the act of that particular creditor didn't start to run, as far as he personally was concerned, until the levy had been made. The four-month period by [18] which it could be taken away from that judgment creditor started to run from then, not from 1937. They didn't have any lien on personal property in 1937. A trustee in bankruptcy couldn't go back and take away personal property from a creditor who didn't have a lien on it. The four-month period runs from the time it starts to become a lien.

Mr. Casey: No. If the judgment creditor in this case satisfies her judgment out of personal

property, the creditors aren't hurt, because then the lien on the real property automatically would be raised. That is why the law is as it is.

The Court: In the Dysart case the court says, after citing Section 3 of the Act:

"There is no evidence that appellant, within four months next preceding the filing of the original petition, the supplemental petition or the amended petition, committed any of the acts which Section 3, subdivision a, declares to be acts of bankruptcy. There is evidence that appellant suffered or permitted a creditor, Mary T. Christensen, to obtain a judgment against her in 1937, and that she suffered or permitted another creditor, E. H. Youngblood, to obtain a judgment against her in 1938; and we assume, without deciding that Christensen and Youngblood thereby obtained liens upon appellant's property * * *".

In the footnote Judge Mathews says:

"Both judgments were obtained in New Mexico. Whether, [19] in New Mexico, a judgment is a lien upon the judgment debtor's property is a question which counsel have not seen fit to discuss."

Then he goes on:

"* * * but there is no evidence that appellant was insolvent when said liens, if any, were obtained. Furthermore, said liens were obtained, if at all, long prior to the commencement of the four months period specified in Section 3, subdivision b."

Therefore, the court assumes that the lien that is spoken of here is the lien of the judgment and not the lien of any execution.

Mr. Casey: Yes.

The Court: (Reading):

“There is evidence that appellant suffered or permitted an execution to be issued on the Christensen judgment on November 21, 1939, and that the execution was levied upon certain of her property on December 13, 1939; and we assume, without deciding, that Christensen thereby obtained a lien upon the property so levied upon * * *”.

So, you see, there the court assumes that so far as the property is concerned the lien dated from the levy. And then again they say:

“This question, also, counsel for all parties have chosen to ignore.”

That is another one of those cases. [20]

Mr. Turnbull: The point was, your Honor, they didn't prove that it wasn't set aside within the five days. That is the only point involved.

The Court: The only point I am trying to find out is if, under the law, the levy of the execution was the starting point of the lien period or the execution or the entry of the judgment. If the levy were on real property, I would say, assuming the law of New Mexico to be the same as elsewhere, that the docketing of the judgment automatically made it a lien against all the property.

Mr. Turnbull: I concede that is true.

The Court: Now, as to personal property, there is no such law, although there may be a law in New Mexico. So, gentlemen, it occurs to me that you ought not to proceed in darkness; that it is very

easy to prove what the New Mexico law is by getting the New Mexico code.

Mr. Casey: I can give you the citation.

Mr. Turnbull: May I ask counsel, Does he claim that a judgment is an automatic lien on personal property?

Mr. Casey: My answer is "No." But you claim you have a lien the first time you get the lien. That is the basis of an act of bankruptcy. You can't wait two or three years and get another act of bankruptcy by selling personal property. In other words, this judgment became a lien in the February term of 1937, and if the creditors wanted to take advantage of it, they would have to do so within four [21] months of February, 1937.

The Court: Well, this case does not so hold, unless there is another case which so holds. This case, of course, has to go back to the time of the attachment because, with the entry of the judgment, you see, the lien of the attachment is merged into the judgment and thereafter execution issued——

Mr. Casey: Correct.

The Court: ——and, you see, some people in California try to take advantage of that rule and claim that therefore the attachment is wiped out.

That attachment has done one thing for you. It has sequestered—that is a good word that we don't use enough—the property to abide by the judgment.

Mr. Casey: Yes.

The Court: Then when your judgment came automatically the property you have sequestered

would stand you in good stead. Otherwise the creditor who had a last judgment could defeat your prior attachment; and that was actually attempted in California.

Now, when you talk California law I am on my own ground. When you talk New Mexico law I don't know what it is all about.

Mr. Casey: In 1937 the real property of Mrs. Dysart was sequestered by the judgment lien.

The Court: No. Sequestration may be of separate pieces of property. Under your theory automatically when her [22] judgment was secured it became a lien upon real property.

Mr. Casey: Yes.

The Court: All right. But if it did not become a lien on her personal property, the mere fact that the lien was impressed on her real property would not destroy or would not be the starting point for the rights as to a lien on personal property which could not arise until levy later on.

Mr. Casey: I agree with you there. But you have to go a step further. The Bankruptcy Act does not provide nor do the decisions permit one who has had a lien upon real property thereafter and more than four months beyond the procurement of that lien on real property to seek another act of bankruptcy by having some personal property put up for sale and saying, under Section Three, subsection 3, "Why, you haven't vacated the sale."

The Court: If they levied on real property, they have exhausted their right.

Mr. Casey: That's it. The Pulp case states, I think, probably a little further down:

“This date,” that is, the date of the procurement of the first lien, “whereby attachment, judgment or execution * * *”

The Court: Where are you reading from?

Mr. Casey: I can't recall. “This date becomes of vital importance * * *”

The Court: Wait a minute. Let's find it.

Mr. Casey: In other words, the date of the procurement [23] of the lien for the first time becomes of vital importance, either for the 5-day vacation of sale or the 30-day requirement of the Act. The majority of courts have held that the petition must be filed within four months after the creation of the lien for the first time.

Mr. Phillips: That is, assuming that there is no further act of bankruptcy.

Mr. Casey: I am talking about one act of bankruptcy.

Mr. Phillips: Well, we are talking about something else.

The Court: The Northwest Pulp case says this, after citing the subdivision, and this is Judge Sawtelle:

“The use of the conjunction ‘and’ instead of the disjunctive particle ‘or’ indicates that both elements must concur to constitute an act of bankruptcy * * * And both must concur within the four-month period prior to the filing of the petition in bankruptcy. If the lien is obtained before the deter-

mining period has commenced to run, and enforcement proceedings are instituted within the four-months' term, a complete act of bankruptcy has not been committed.

"That both judgments in this case created valid liens at the time the judgments were docketed is admitted by the appellee in its amended petition. Provision for the obtaining of such liens is contained in the Oregon statute * * *

"It next becomes necessary to inquire whether merely permitting, while the debtor is insolvent, a judgment creditor to enforce, within the four-month period preceding [24] the filing of the petition, a valid lien docketed many months in the past, constitutes an act of bankruptcy. * * *"

And they say "No."

Mr. Casey: That is my position.

The Court: Yes. But they presuppose a valid lien created by the judgment.

Mr. Casey: We have presupposed by this judgment a valid lien upon real property.

The Court: In other words, whether they actually levied or not; is that your idea?

Mr. Casey: Yes.

Mr. Turnbull: But that is not the act of bankruptcy we are relying on.

The Court: That's right.

Mr. Turnbull: You cannot compel us to make our act of bankruptcy. We didn't create the act of bankruptcy.

Mr. Casey: I claim that that act of the sale of

personal property, instead of selling the real property, is not an act of bankruptcy.

The Court: Well, let us look at this.

Mr. Casey: In other words, Mrs. Christensen could have sold the real property and procured the money. Instead of doing that she levied on personal property. She can't do that as an act of bankruptcy.

The Court: She can do it to get the money. This case does not sustain your contention that the five days is in [25] addition to the 30 days. This case clearly holds that the five days is a part of the 30 days.

Judge Sawtelle says specifically that that is the point that is being decided, and the 5-day period is not a separate period or a separate fact or a portion of the 30-day period. You see, he said:

“The controlling question presented in this case is whether or not an act of bankruptcy is committed by an insolvent debtor's failure to vacate a judgment that gave rise to a lien at a date prior to the commencement of the 4-month period, within at least five days before the date of sale or other disposition of property affected by the judgment, said sale taking place within the four-month period. * * *”

Mr. Turnbull: That is a prior lien, however, your Honor. If you test the reason for the rule, it is this: Of course a sale——

The Court: If that were the case, then this is what might happen: A lot of these problems arise

in the light of conditions. You always have to test what would result. Here is a man who has a judgment, who has a judgment that may even be outlawed by the statute of limitations. He can run an attachment five years after the failure to discharge the attachment. Assuming that the man, the person who has been insolvent for all those years, would recreate each time he did that his lien. —assuming the law of New Mexico to be [26] the same as that of California—even though the statute of limitations has run against the judgment, you can still obtain an execution, so that you could, every time that you levied on property that the debtor had fully acquired and if he failed to discharge, bring him into court charging an act of bankruptcy.

Mr. Turnbull: May I suggest, your Honor, that the conduct that counsel complains of is not the conduct of the petitioning creditors.

The Court: I understand that.

Mr. Turnbull: The test in bankruptcy is: Is this personal property going to be removed from the assets of the alleged bankrupt? It isn't removed from the assets of the alleged bankrupt until a certain time; and a trustee in bankruptcy on behalf of the other creditors who don't get it within the four-months period can get it thrown back into the general pot. He can't do that as long as it remains the property of the bankrupt because it is part of the bankrupt's assets. The test

in bankruptcy, therefore, is: Is the estate of the bankrupt, are the assets diminished by that act?

That is what makes it an act of bankruptcy.

Now, until such time as they levy upon the personal property of the debtor, it is her property. Nobody has taken it away from her. Nobody has got a lien on it. She may be solvent as long as she has it. [27]

Now comes along a creditor and maybe he has extended credit. He comes up to her—I am trying to answer your Honor from a practical standpoint—and he does not take her personal property away from her up to a certain time—she may be solvent; she may be insolvent—but at a certain time he does take it away from her by a sale; and the estate of that bankrupt is diminished by the value of that property which is taken away from her and the four-months period in which the creditors might throw it into the general pot starts to run then.

From the practical standpoint, your Honor, and from an administrative standpoint of the application of bankruptcy law it would be ridiculous to say that because they didn't take it away from her the four-months period started to run. The estate of that bankrupt is diminished when they take it, but not until they do take it. Any creditor could levy against that personal property.

The Court: Too much of our difficulty with bankruptcy law lies from the fact we forget the law of the state where we sit. I had occasion to call attention recently to two cases where, if the

referees and counsel before them had forgotten the general principles of bankruptcy and looked to the Civil Code, they would discover a solution to their problem contrary to the way the decision went. Nobody thought about it.

Ultimately here we have got to determine this: Is a [28] lien created? If the lien is created by the judgment, then, of course, the mere fact that levies are *seriatim* wouldn't extend your lien. That is what this case says.

Mr. Turnbull: I agree with your Honor. But how can a man have a lien on personal property which he does not levy or take into possession? That is not the law of this state. Forget the law of bankruptcy. It does not diminish the estate of the bankrupt until it is levied or taken upon. That is the reason for the rule. That is why the Bankruptcy Act has been amended several times.

Mr. Casey: Let me correct Mr. Turnbull. He says that the debtor's estate is diminished. Now, if Mrs. Christensen has a \$1,283 lien upon \$10,000 worth of property and this debtor went into bankruptcy, the bankruptcy court would take that property subject to the \$1,283. But instead of taking the \$1,283 on the real property, if that judgment creditor takes \$1,283 out of the personal property, the bankrupt estate is not diminished. The trustee in bankruptcy would take over the estate in exactly the same position as it would the assets as though she had levied upon the real property and got her \$1,283.

Mr. Turnbull: Again counsel assumes that there is real property that he got a lien on worth that amount of money.

Mr. Casey: The Court has decided that.

The Court: Let us see the section.

“* * * suffered or permitted, while insolvent, any [29] creditor to obtain a lien upon any of his property through legal proceedings and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property * * *”

Now, Judge Sawtelle said this:

“If the lien is obtained before the determining period has commenced to run, and enforcement proceedings are instituted within the four-months’ term, a complete act of bankruptcy has not been committed.”

In other words, the enforcement proceedings do not extend the period of the lien of the judgment in that particular case.

Gentlemen, I shall declare a short recess. I want to find that case, that Washington case.

Mr. Casey: May I cite, for the purpose of the record, the New Mexico statutes?

The Court: I have no way of getting them.

Mr. Casey: Chapter 76, section 110, provides that the judgment in the county clerk creates a lien on all real property in that county.

The Court: I assume that is the law.

Mr. Turnbull: I understand that counsel does

not contend there is any law of New Mexico that makes a lien on personal property.

The Court: Unless that lien on personal property gives [30] it the character that you cannot afterwards start any execution on personal property and be within the four-months period. In other words, he says if the judgment gives you a lien on real property that your four-months period is determined from the date of the lien whether they actually levy or not. Is that correct?

Mr. Casey: That is correct.

Mr. Turnbull: Without any levy on personal property.

The Court: Without any levy on personal property. I am not agreeing with them. I am just stating the proposition.

Mr. Turnbull: Of course, if that is so, a person who extends credit to a debtor doesn't do the other creditors a favor at all. He creates a lien in his own favor.

The Court: Well, that may be true.

Mr. Turnbull: That is not the law.

The Court: That may be true, but it may result in a great injustice. I ran across a problem the other day. I decided it to the best of my ability. I may be right and I may be wrong, although I am not apologizing for it. It shows in determining bankruptcy we have to bear in mind the state law and what business conditions are. The question before me was whether the bulk sale act applied to a chain bakery which abandoned four

profitable branches and sold the stock and the fixtures when the value was an infinitesimal part of the value of the assets. The assets of the company showed some \$78,000. According to appraisal of the goods I found [31] the fixtures were worth about \$600 altogether. There was no evidence of fraud. I held that the Legislature specifically used the definite article "the." It didn't say "any fixtures." It says "the fixtures of a baker." It didn't say, as it did in the bulk sales part, "substantial fixtures." There was no law one way or the other.

I was governed chiefly by this proposition: that it would be absolutely unfair in the modern day of the chain store to subject a concern which has 30, 40, or as many as 500, as Safeway has, to the penalty of having its act characterized fraudulent for failure to file a certificate every time it sells fifty dollars worth of fixtures in a place that has proved unprofitable. We have got to consider the consequences from both sides.

I can see the validity of your argument, but I can also see that the argument would mean that so long as a person during his lifetime should come in possession of personal property you could call him into bankruptcy, even at the time that the judgment has been outlawed.

Mr. Phillips: If your Honor please, would it not be possible for a judgment debtor, if he so desired and was so constituted, to defeat the Bankruptcy Act by going to the sticks some place and permitting a judgment lien to go against him and

then move to Los Angeles and acquire personal property, committing several acts of bankruptcy and thereby defraud his creditors? [32]

The Court: You cannot follow him out of the state, anyway, as far as his personal property is concerned.

Mr. Phillips: I mean in the state, if he goes to the sticks in some other county. We say that if the reasoning of Mr. Casey is correct that it would defeat the very purpose of the Act, Section Three, subsection 3.

The Court: All right. I will see about it. We will take a short recess. I want to find that case.

(Short recess.)

The Court: Gentlemen, I have run through the cases, and I have reached the conclusion that subdivision 3 of Section Three of the Bankruptcy Act of 1938, as it is interpreted by the courts, deals with liens obtained upon any property through legal proceedings.

In reading the history of the Section, I find that the amendment of 1926 aimed to overcome a decision of the Supreme Court which permitted a creditor to obtain a lien and then, regardless of any time limit, take his time within which to enforce the right he obtained; and the object of the section is to cut off that right so that regardless of the time when the lien was obtained, his rights had to be asserted within the period in order to acquire any rights in preference to other creditors.

I followed Mr. Turnbull's suggestion to start

from textbooks, although it isn't my method of working. I work from digests. The average textbook is merely a summary of the [33] rulings and, oftentimes unless the man is a legal philosopher like Wigmore or some of the other men, the work is not even done by the man whose name the book bears but by some amanuensis, or it is merely a summary or his interpretation of the statute. Too often I have been misled by following the interpretation which a person placed upon the statute.

I found recently an illustration in tax law where a tax writer who had a special axe to grind because he happened to be also a Treasury official, placed a certain interpretation upon community property rights which, of course, the Treasury Department never has liked. I decline to follow him but follow my own interpretation of what the California law is with reference to it.

However, the textbook statement is a good starting point at times. So we start with 150.70 of Remington interpreting the particular section, and we find the point investigated:

“* * * that the mere obtaining of a judgment that does not create a lien is not enough. ‘Judgment’ means judgment lien.”

I find a large number of cases including some in our own circuit dating way back which so interpret the section. We have, for instance, in our own circuit the case of *In re Beaver Coal Co.*, 113 Federal Reporter 888, decided way back in 1902 which, interpreting the provisions, similar provi-

sions which are contained in the Act as it then stood, says that [34] similar provisions contemplate liens whether they are obtained by the judgment or by the attachment. In that case Judge Gilbert was talking about the law of Oregon, and he said, and I quote from 891, 113 Federal:

“By the law of Oregon, the lien of an attachment upon personal property is enforced by a provision in the judgment entry directing the sale of the attached property. The judgment order so made does not create a new lien nor discharge the old. It directs only the enforcement of the lien. It is similar in its nature to a decree for the foreclosure of a mortgage. It sustains the attachment lien, and subjects the attached property to its satisfaction. Construing the language above quoted from section 67f, we think it refers solely to liens, and that it does not mean that all judgments rendered within four months prior to bankruptcy shall be null and void. The use of the words ‘judgments * * * or liens’ indicates that it was the purpose of the act to avoid liens only which were obtained by judicial proceedings within the prescribed time, and not to declare void judgments as such.”

Then he refers to the fact that there are some decisions to the contrary; but he declined to follow them.

Another older case I find is *Colston v. Austin Run Mining Company* from the Third Circuit. The opinion in that case by the Circuit is rather short. It was at the time when appellate courts occasionally

pay to the District Judge [35] the compliment of adopting his opinion, which they did in this particular case.

Mr. Casey: Will you give the citation, your Honor?

The Court: This is 194 Federal, 929, decided 1912 by Gray, Buffington and Young.

I read from page 935:

“The question is thus presented, as stated by the court below, whether an attempted enforcement while insolvent within the space of four months next before the filing of a petition in involuntary bankruptcy, of a lien on the property of the alleged bankrupt validly created and substituting for more than that period, coupled with an omission by him to secure, at least five days before a sale or final disposition of such property, the vacation or discharge of such lien, constitutes an act of bankruptcy under section 3a of the Bankruptcy Act. There has been some conflict in the decisions upon this question, but we agree with the learned Judge of the court below that both reason and the weight of authority compel the conclusion that mere failure, while insolvent, to vacate or discharge the lien within the statutory period of four months, and at least five days before a sale or final disposition of the property affected, does not constitute an act of bankruptcy. Priority is obtained when a lien attaches, and not when it is enforced. The date of the sale is immaterial in this respect; whenever it takes place, it relates back to the date

when the lien [36] attached. The attaching creditor in the case before us, therefore, did not obtain a preference by the decree liquidating his debt. * * *

Then they cite from *Metcalf v. Barker* and refer for further authorities to the District Court case.

Now we come down to later dates. I have one here. Here is one from the Sixth Circuit, *Hawthorne Valley, Inc., v. Arthur J. Adams*, 1934, 69 Fed. (2d) 691, 25 American Bankruptcy Reports, New Series, 176. For some reason or other the reference was to this rather than to the official reports; so I brought it here. The court cites there from *Citizens' Banking Co. v. Ravenna National Bank*:

“Looking at the terms of this provision, it is manifest that the act of bankruptcy which it defines consists of three elements. The first is the insolvency of the debtor; the second is suffering or permitting a creditor to obtain a preference through legal proceedings; that is, to acquire a lien upon property of the debtor by means of the judgment, attachment, execution, or kindred proceeding, the enforcement of which will enable the creditor to collect a greater percentage of his claim than other creditors of the same class; and the third is the failure of the debtor to vacate or discharge the lien and resulting preference five days before a sale or final disposition of any property affected. Only through the combination of the three elements is the act of bankruptcy committed. Insol-

vency alone does not [37] suffice, nor is it enough that it be coupled with suffering or permitting a creditor to obtain a preference by legal proceedings. The third element must also be present, else there is no act of bankruptcy within the meaning of this provision. All this is freely conceded by counsel for the petitioning creditor."

The court then refers to the Ninth Circuit opinion in *Northwestern Pulp & Paper Company v. Finnish Luth Book Concern* for an analysis of this provision. Then it goes on to say:

"According to the petition the preference consisted of the levy of the fieri facias on March 2, 1932 * * * But this levy, of March 2, was made more than four months before the petition was filed and we think therefore that there was a failure to aver an act of bankruptcy because the province which was a constituent element of the act was not 'suffered or permitted' within that period."

I am omitting a portion, reading from the last paragraph of page 179:

"We think this interpretation of section 3(a) (3), 11 U.S.C.A. section 21(a) (3) is correct, because, while clause 3 does not in specific terms require that the preference, which the debtor may discharge at least five days before a sale or other disposition of the property affected, shall be attained within four months before the petition is filed, yet a contrary holding would lead to a situation which we think was never contemplated. *Owen v. Brown* * * *" [38]

I stop here for a moment. This court says clearly that a five-day period is not an alternative, is not in addition to the thirty days. Then it goes on, continuing:

“The security of all preferences obtained through legal proceedings at any time how ever long before the four months’ period would be endangered and such a result would be inconsistent with section 67f * * * as construed in *Metcalf v. Barker* * * *”

Then they quote from *Metcalf v. Barker*.

Coming down to later cases there is one here where I am going to read the District Court case first and then the opinion of the Circuit to show that there is at least one Circuit which holds that if the judgment created a lien on real property, unless there is a showing that there was no real property at the time or he never owned it, a subsequent levy on personal property is absolutely ineffective because the law contemplates not the actual enforcement of the lien but the existence and creation, automatic creation, of the lien by the State law. That is why this section says:

“ * * * suffered or permitted while insolvent to obtain a lien upon any of his property * * *”

He didn’t say upon “his property,” but “any of his property.” And if automatically, if it can be shown that there was real property at the time of the judgment to which the lien attached, then regardless of whether any levy was actually carried, the four-months period begins to run from [39] that time.

Incidentally, Mr. Remington thinks it of such importance that he gives it practically half of the opinion on page 242 of the text following the reading of the statement I have just read. He refers, however, only to the District Court's opinion which probably was all he had at the time the original text was written, although in the supplement he refers to the opinion in the Circuit which reaffirmed the principle.

This is a motion to dismiss a petition on the ground it failed to show an act of bankruptcy.

Mr. Casey: Let me have that citation, your Honor.

The Court: This is 25 Fed. (2d) 773. It is the District Court of Pennsylvania and, of course, that was the time when the Federal Supplement was not in existence and District Court cases appeared also in Federal (2d) which they don't now. Reading at page 774:

"The petition avers in substance that the alleged bankrupt, while insolvent and within four months next preceding the filing of the petition, permitted a judgment to be entered against him, which judgment has not been vacated, discharged, or satisfied, and that more than 30 days have elapsed since the entry of the judgment. It is contended that this is not sufficient, because there is no allegation that the judgment is a lien on any property of the bankrupt. The point for decision is whether the word [40] 'judgment' in the statute means only a judgment which is a lien upon the property of the alleged

bankrupt, or means any judgment, whether a lien or not.

“The statute specifies ‘any levy, attachment, judgment, or other lien.’ 11 U.S.C.A. section 21(a) (4). Many judgments (as in a case where the defendant owns no real estate, but personal property only) are not liens. There is thus an ambiguity, and it is proper to consider the history and purpose of the legislation in order to determine its true intent * * *”

Then it goes on and analyzes the Ravenna case to which I have already referred. He speaks of the history of the 1926 amendment and quotes the Senate Judiciary Committee saying the object of the bill was this:

“ ‘The amendment is for the purpose of preventing a creditor from obtaining a lien and holding it without proceeding to a sale under it until it ripened into a preference.’ Clearly, the attention of the Congress was turned only to judgments which were liens. Legislation directed toward judgments which were not liens would have been superfluous. Under the law as it stood before the amendment, no advantage could have been obtained prior to levy by the creditor holding such a judgment, and after levy and upon proceeding to a sale the provision for the third act of bankruptcy struck down the preference.

“The context in which the word appears, and the [41] limitations implied in the phrase ‘or other liens,’ call for the application of the rule of *noscitur*

a sociis * * * The plain intent of the congress, as well as the association of the word in the act itself, 'justifies, if it does not imperatively require,' the conclusion that the judgment meant is a judgment which creates a lien.

"If the judgment referred to in the petition is a lien, and so within the meaning of the statute thus construed, the petitioners should be permitted to so aver. Ten days will be allowed for amendment, and in default of such amendment the petition will be dismissed."

They did not file an amendment, and the petition was dismissed and the case went to the Circuit.

Reading from *Weitzel Flooring Corporation v. Getz*, an opinion from the Third Circuit, 1929, 31 Fed. (2d) 930 before Buffington, Wooley and Davis, at page 931:

"The facts are not fully set out in the record, but, as we understand them, the arguments and opinion below are predicated upon the assumption that the judgment pleaded was not a lien on the property of the bankrupt. The appellants contend that it makes no difference whether or not it was a lien. It was a 'judgment' against him and comes within the terms of the act * * *"

Then they go on to hold as other courts have held that the aim is not a judgment but judgments which create a lien or any other proceedings which create a lien, and that is the [42] important thing and not whether any process is used in enforcing the lien. Giving the meaning of the section, the court says:

“Before the amendment of 1926 a creditor might obtain a lien against a person, and not proceed under it for four months, when it would ripen into a legal preference. Another creditor in many cases was powerless to prevent this, for before this amendment an insolvent debtor did not commit an act of bankruptcy, rendering him subject to involuntary adjudication, by mere inaction for a period of four months after levy of an execution upon his real estate * * *”

Citing *Citizens Banking Company v. Ravenna National Bank*.

“This amendment was intended to prevent this. The report of the Senate judiciary committee states with reference to this new act of bankruptcy that: ‘The amendment is for the purpose of preventing a creditor from obtaining a lien and holding it without proceeding to a sale under it until ripened into a preference.’ This amendment enabled any other creditor, after 30 days from the entry of the judgment, to file a petition in bankruptcy against the debtor, and thus prevent the judgment from becoming a legal preference, which, however, could result only if the bankrupt had real estate upon which the judgment would become a lien. The word ‘other,’ used in defining the fourth act of bankruptcy, in connection with the words ‘levy, attachment, judgment, or other lien,’ implies that the Congress had in [43] mind, when it used the word ‘judgment,’ such a judgment as would become a lien on real estate, and so a legal preference, unless vacated or discharged within 4 months * * *

“The appellants, however, raise the question in their paper book * * *”

I don't know what that is. Some of these phrases are funny. They must mean something in making up the record.

“The appellants, however, raise the question in their paper book that, since this is a motion to dismiss the petition in bankruptcy, the court cannot dismiss without a finding as a fact that the appellee did not have any real estate upon which the judgment would operate as a lien, and say that ‘there were no depositions taken, and therefore no basis on which the court might find as a fact that the debtor did not own any real estate.’

“As above stated, it was our understanding at the argument that the debtor does not have any real estate. The case proceeded on this theory in the court below, and the opinion of the learned District Judge was predicated upon this assumption. However, he gave the appellant an opportunity to allege and establish that the debtor did have real estate at the time the judgment was entered. At the conclusion of his opinion, he said: ‘If the facts in this case are really within the meaning of the statute thus construed, the petitioners should be permitted to so aver. Ten days will be allowed for amendment, and in default of such amendment, [44] the petition will be dismissed.’ They did not amend their petition and allege that he had real estate, but appealed and argued the case here without making such allegation.

“If, however, the District Court was in error in its assumption, and the argument before that court and this court was based upon an assumption contrary to facts, a re-argument should be had upon definite allegations as to the real fact, so that the opinion of this court as well as that of the District Court may be corrected, and not based upon a non-existing fact. But if we and the District Judge correctly understand the fact, that the alleged bankrupt does not have any real estate, further proceedings based upon vague intimations that he may have, would be improper practice.

“The decree of the District Court is affirmed.”

The petition there alleged that Getz while insolvent suffered a judgment to be entered against him for failure to file an affidavit of defense to a statement of claims served upon him by Weitzel Flooring Corporation “wherein it was set forth in its claim against the said Max F. Getz for \$2,500 with interest due on two promissory notes in the sum of \$800 and \$1,700 respectively. (The) judgment was entered as of common pleas * * * (The) judgment has not been vacated, discharged, or satisfied, and more than thirty days have elapsed since the entry of (the) judgment.”

The court held that as the debtor did not have any real property, the judgment did not constitute a lien; and none [45] having been acquired through attachment, no act of bankruptcy had been committed.

As we get closer to more recent cases we find more

general declarations to the same effect. I have a case here from the Second Circuit decided in 1932, *Elkay Reflector Corporation v. Savory, Inc.* In that case the creditor had begun an action in the Supreme Court of New York to recover some \$20,000. An attachment was issued in the action, and on December 5, 1930, the sheriff of Kings County took possession of the personal property of the defendant in that county. Judgment was obtained in April, 1931. The question arose whether an act of bankruptcy had been committed. The court said this:

“A new act of bankruptcy was created under section 3a (4) of the Bankruptcy Act, as amended May 27, 1926 * * *”

And that is the present subdivision 3.

“* * * in addition to the former subdivision 3 of section 3a of the Bankruptcy Act. That subdivision defined one of the acts of bankruptcy as having ‘suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference.’ Under it a creditor could obtain a judgment within four months prior to the filing of the petition which became a lien against the bankrupt’s real property or through issuance of an execution [46] became a lien against his personal property, and thereafter realize a preference through a sale had after the petition was filed. In other words, by mere failure to enforce a lien during the four months’ period,

the creditor could obtain a preference through legal proceedings * * *”

Again citing *Citizens’ Banking Company v. Ravenna Bank*.

“The purpose of the amendment was to obviate the necessity of a sale or final disposition of property during the four months’ period in order to constitute an act of bankruptcy. In other words, suffering a creditor to obtain a lien during the four months’ period, through an attachment or judgment, was made an act of bankruptcy by the amendment. A provisional attachment levied prior to the four months’ period ripens, after judgment, into an unassailable lien no matter when judgment takes effect * * *”

Mr. Phillips: What is that citation, your Honor?

The Court: What is that?

Mr. Phillips: Would you give us the citation?

The Court: 57 Fed. (2d) 161, Second Circuit. It cites *Metcalf v. Barker*, *Gatell v. Millian*, *Lumet and Co. v. Delgado* and *In re Blair*. Then continuing:

“It is not reasonable to suppose that a preference which cannot be set aside is made an act of bankruptcy and a preference so obtained was held by the Court of Appeals of the Third Circuit not to constitute an act of bankruptcy, *Colston v. Austin Run Mining Company*,” the case which I read [47] before.

“* * * such also was the decision by Judge Burns in the District Court in *Julius S. Cohn and Co. v.*

Drennan * * * Where property has been attached by mesne process, the lien dates from the original levy irrespective of when the judgment is recovered. * * *

“In the case at bar the judgment and the execution issued in pursuance of it merely enforced the lien of the attachment obtained prior to the four months’ period. The amendment of 1926 therefore does not cover the case. It was only intended to render a lien acquired by judgment sufficient as an act of bankruptcy and not to require a final disposition of property of the bankrupt by sale. It cannot be presumed to affect a lien created by an attachment prior to the four months’ period.

“It is contended that under the words of the amendment a ‘judgment’ within the four months’ period is alone sufficient, but it seems plain that for a judgment to come within the spirit and meaning of the act it must be a judgment that has become a lien and as such a legal preference * * *”

Then they refer to the Getz case, which I have already read, and say:

“As the lien here, read in connection with the warrant of attachment, antedated the four months’ period, there was no act of bankruptcy * * *” [48]

I think this is the last one, gentlemen. I did some fast work there. This is another Second Circuit case, 1937. There are some later cases than this. I have some District cases later than that, but I think these are enough.

This is *In re Flushing-Queensboro Laundry*, 90

Fed. (2d) 601, 1937. It involves a judgment of the Municipal Court; and the question before the court was whether the judgment created a lien. In doing so Judge Chase stated the conditions and the exceptions, and he followed the other cases to which I have referred. I am going to read the language because it shows clearly that if the evidence shows that if at any time through the lien of a judgment a lien was created, that then any subsequent levies are ineffective unless it be shown that there was no lien, either by showing that the judgment did not have that effect or by showing that the kind of property to which the lien of the judgment automatically attached did not exist.

“The proof as to the other alleged act of bankruptcy was also insufficient. The judgment relied on below was entered and docketed in the Municipal Court of the City of New York, Borough of Manhattan, Fifth District, on the 25th day of September, 1935, for the sum of \$125.73. Execution was issued and delivered to a marshal who returned it unsatisfied. It was not docketed in the office of the county clerk as was necessary to create a lien on real property (citing cases). Had there been any personal property of the judgment [49] debtor, what was done might have created a lien against that, section 679 of the New York Civil Practice Act, but, in the absence of proof of such property, since the alleged fraudulent transfer * * * was not shown, there was no lien for there was nothing to which a lien could attach. Merely the suffering of

such a judgment as was entered and its nondischarge within thirty days was not an act of bankruptcy. To be that under section 3a (4) of the Bankruptcy Act, as amended, 11 U.S.A.C. 21(a) (4), a lien must be created. It is the failure to discharge a lien obtained through legal proceedings and thus do away with its possible adverse effect upon other creditors which has been made an act of bankruptcy * * *"

They cite the Elkay Reflector Corporation against Savory, which I have also read.

I think the decision of the Ninth Circuit in the case before us really intimates the same situation: that if at any time a lien was actually obtained by the judgment against any of the property, that exhausts the power of the section and thereafter you cannot start the four months' period running by levying on property which may make its appearance after the judgment, and that the only way to avoid the effect of the lien of the judgment is to show that at the time it was levied there was no property to which it attached.

Now, for instance, Judge Mathews says: "There is evidence that appellant suffered or permitted a creditor, [50] Mary T. Christensen, to obtain a judgment against her in 1937, and that she suffered or permitted another creditor, E. H. Youngblood, to obtain a judgment against her in 1938; and we assume, without deciding, that Christensen and Youngblood thereby obtained liens upon appellant's property; but there is no evidence that appellant

was insolvent when said liens, if any, were obtained * * *

Again they say that counsel have not discussed the proposition whether a judgment is a lien upon the debtor's property. Then they go on again:

"There is evidence that appellant suffered or permitted an execution to be issued on the Christensen judgment on November 21, 1939, and that the execution was levied upon certain of her property on December 13, 1939; and we assume, without deciding, that Christensen thereby obtained a lien upon the property so levied upon; but there is no evidence that the lien was not vacated or discharged * * *

In other words, the court assumed, in the absence of any argument, that under the law of New Mexico a judgment was a lien upon certain defined property and proceeded to declare that even so assuming there was no showing that it was not vacated within the period of time provided by the statutory definition which I have read.

Now, there is no evidence here one way or the other, Mr. Casey.

Mr. Turnbull: May I suggest that we stipulate the [51] effect of the New Mexico statute to the effect that under the laws of New Mexico as they existed at the time the Christensen judgment was entered and at all times since that the same becomes automatically a lien upon the real estate of the judgment debtor in the county in which the judgment is rendered. Counsel offered the citation a few minutes ago, and I agree with him.

Mr. Casey: Yes, I understand that is the statute.

Mr. Turnbull: Have you the citation of the statute?

The Court: He gave it to me.

Mr. Turnbull: I think we should have it in the record.

The Court: I think he gave me New Mexico statutes, Chapter 76, section 110.

Mr. Turnbull: Whether or not that is the statute, if counsel says it is we will take his professional word for it.

We do have a stipulation, now, your Honor, of the effect of the law in New Mexico.

The Court: What, if any, stipulation can you arrive at as to whether on the date of judgment the respondent here had real property in the county in which the judgment in either of those cases was entered?

Mr. Turnbull: I think I can answer it this way: I have here, and subject to your Honor's ruling——

The Court: I merely told you what I have found. I am not making a ruling.

Mr. Turnbull: I understand. [52]

The Court: I felt perhaps my thought would assist.

Mr. Turnbull: I have here a certified copy showing that there was real property in the State of New Mexico that was sold under the Youngblood judgment; and it appears that the real property did exist in the name of Mrs. Dysart at the time we claim our act of bankruptcy existed. In other

words, I am going to meet the issue squarely on the question of the ownership of real property. But I want to show it by legal proceedings.

The Court: Yes. That's all right.

Mr. Turnbull: Now, I will answer that by submitting to counsel an exemplified copy of the record in the case of *Youngblood v. Dysart* and state to the court that the same consists of an exemplified copy of the record showing that a judgment creditor of the alleged bankrupt *Dysart* obtained a judgment in New Mexico and sold real estate to Mrs. *Dysart* at a time when it appears that the *Christensen* judgment existed.

The Court: And the *Christensen* judgment is the same judgment, and the failure to discharge you allege as an act of bankruptcy?

Mr. Turnbull: Yes. The *Christensen* judgment referred to by me now and in my previous stipulations refers to the *Christensen* judgment which is pleaded as two different acts of bankruptcy in the petitions, intervening and original, and which is the subject matter of the exemplified copy that I [53] have offered in evidence. Its admission is now before the court and a ruling not yet made.

The Court: Incidentally, gentlemen, the case I referred to in the Ninth Circuit in which they hold that the penalty of the statute attaches, regardless of the ultimate result in the case, is *Weibrenner, Inc., v. Finne*, 105 Fed. (2d) 272. That is our own circuit. In that case Judge *McColloch* of the District of Oregon had held that because the debtor

had beaten the lawsuit that the attaching creditor did not have a valid attachment.

Mr. Turnbull: That related to real property, of course.

The Court: Which?

Mr. Turnbull: That levy in that case.

The Court: No. I merely point to that to indicate the strictness with which they enforce the section.

Mr. Turnbull: Before your Honor rules on the matter, and in answer to the question on real estate, so the question will be fairly before this court I offer in evidence the exemplified copy of the record duly exemplified by the clerk of the court, by the Judge and by the clerk of the court that the Judge is the Judge, out of the District Court of the State of New Mexico, First Judicial District, in and for the County of McKinley, McKinley County being the same county in which the Christensen judgment is rendered, your Honor; E. H. Youngblood, plaintiff, vs. S. Dysart—and I offer to stipulate the S. Dysart is the same Stella Dysart [54] herein——

Mr. Casey: Yes.

Mr. Turnbull: ——showing the existence of real property in New Mexico in the name of Stella Dysart, showing a mechanic's lien thereon and a sale, execution sale, an order approving the sale as made by the District Judge.

I offer that in evidence for the purpose of showing that there was real estate.

Mr. Casey: The only objection I have there is

that in one of these petitions this is cited as an act of bankruptcy.

If this is introduced, it might possibly be used to substantiate that. I am objecting to that alleged act of bankruptcy. First, it is not a lien procured by legal proceedings as a mechanic's lien.

Mr. Turnbull: I agree it does not constitute an act of bankruptcy and it is not offered for that purpose. The petitioning creditors at this time will not rely upon the Youngblood proceeding.

The Court: The courts seem to be agreed on one proposition when they talk about "liens." They mean liens obtained by legal proceedings.

Mr. Casey: Yes, sir.

The Court: There is an opinion by Judge St. Sure of the Northern District of California, that even a tax lien is not the type of lien which the law contemplates.

Mr. Turnbull: I agree with you. But we claim a levy of [55] a quit of execution on personal property is a lien, your Honor. Now, at this time I have answered counsel on the use of this document, your Honor.

Mr. Casey: Well, I haven't even addressed the court without your interrupting.

Mr. Turnbull: I apologize, Mr. Casey.

Mr. Casey: He asked me to stipulate to that. The reason I can't stipulate to this going in, and the reason I do have objection to it is partially, as I have said—and in addition to what your Honor wishes a stipulation to—as to whether or not the

debtor had any real property standing in her name in McKinley County of the date of the docketing of this judgment in 1937 or prior to the alleged act of bankruptcy in these proceedings. I will stipulate that Stella Dysart, alleged bankrupt, did own real property in McKinley County, State of New Mexico, at the date of the docketing of this judgment in the case of Christensen v. Dysart in 1937.

Now, this document contains several other things that are set forth with a great deal of particularity in the pleadings. That is why I don't want this in evidence.

If it is possible to confine the introduction of this document for the sole purpose of showing that Mrs. Dysart, the respondent here, owned certain described property—well, it states here:

“* * * that the plaintiff is entitled to foreclosure of [56] aforesaid lien and that defendant shall pay the amounts found due,” and so forth, “that the aforesaid Section 14, Township 14 north, Range 10, or as much thereof as may be necessary * * *”

Now, I see the nigger in the woodpile there, your Honor, why this is offered. Counsel—at least Mr. Phillips—knows there is an ulterior motive in that “Section 14 in Township 14.”

Now, if you will have the whole stipulation that they owned real property, that they owned real property in that section in that county at that time, that is all that is necessary. Or if he will limit the use of this document for the sole purpose and none other of showing that the respondent, Stella Dysart,

at the date of the docketing of this judgment, to-wit, the February term, 1937—I think it was March 22, 1937, the judgment was actually docketed with the County Clerk—that she owned real property, that would be all right. But to burden the record with a 15 or 16-page document, whatever this is, concerning matters that are foreign to it I think is unnecessarily encumbering the record. I can give counsel a deed dated in 1935.

The Court: I think, for the purpose of the ruling, all we need is just that stipulation.

Mr. Turnbull: If your Honor please, I did not ask counsel for a stipulation. I suggested in view of what your Honor has indicated that the record should show whether she [57] did or did not own real property; and I could make this offer and at this time I am offering this exemplified copy of this record. It is admissible for several grounds. It is admissible on one ground to show insolvency, to show the piece of real property she had was sold by another judgment creditor. There is no joker in it; there is no nigger in the woodpile here at all. It is a plain exemplified record of the court and the conduct of the judicial and executive offices thereunder. It shows the real property was sold. I am perfectly willing to stand on that record so certified by the clerk and the Judge of the court.

The Court: Let us withhold ruling on that at the present time. You have the stipulation, and I will overrule the objection to the document which you identified. But we ought to wait so that the

record would show first my ruling on the exemplified group of papers.

Mr. Turnbull: Shouldn't your Honor have before you the record on whether there was or was not real estate?

The Court: Yes, I want that. But you have stipulated orally. I will tell you what I will do. Let us mark this one first offered Exhibit 1 for identification.

Mr. Turnbull: The one on which the ruling is pending on the objections thereto?

The Court: Yes. Exhibit 1 for identification.

Mr. Turnbull: I offer, therefore—before your Honor rules on the question of evidence which is the offer and [58] objection thereto—the exemplified copy in the Youngblood case showing the existence of certain real property and the sale thereof under judicial process.

The Court: All right. I will receive that only as material so far as it shows as a fact that real property existed at the time of the judgment to which the lien would attach.

Mr. Turnbull: I want to show, as a part of my proof of insolvency, that she owed debts in excess of the statutory amount of \$1,000 which is required under the jurisdictional provisions of the Act.

I also offer it for the purpose to show the question of insolvency, that she had a judgment against her there.

The Court: You did not mention that before. So I will have to think about it.

Mr. Casey: That is why I said, your Honor, there was a nigger in the woodpile; and there is one more thing he has said he mentioned.

Mr. Turnbull: I have got to prove those things.

The Court: The point is you have got to prove one thing at a time. I think at the present time I will admit them just for that purpose, so you may renew your offer after I have ruled on this matter.

Mr. Casey: Well, for the purpose of assisting your Honor in ruling, may I ask counsel if he will stipulate that in addition to the property described in that last offer that the respondent had other real property in McKinley [59] County at that time?

Mr. Turnbull: If she did, I don't know what it is.

Mr. Casey: Well, Mr. Phillips knows. Will you so stipulate, Mr. Phillips?

Mr. Phillips: That she had other property?

Mr. Casey: Other real property besides the property described in this Youngblood judgment.

Mr. Phillips: Not that I know of. I think she had a part in Section 11 which she conveyed to her sister.

Mr. Casey: But she didn't convey that in 1937?

Mr. Phillips: I don't know when the conveyance was. She testified it was conveyed in the last proceeding.

Mr. Casey: You have seen the record personally.

The Court: All right. Now, gentlemen, before I go on and state my conclusion, I want to call at-

tention to two very well considered District cases, very late ones, which follow the same principle declared in the cases to which I referred; in fact, cite all those cases. One of them was *In re Day*, Maryland District, Judge Coleman, 1938, reported at 22 Fed. Supp.

Mr. Phillips: What page?

The Court: Page 946. It deals with the sufficiency of the voluntary petition, alleging an act of bankruptcy under subdivision 3 of Section Three:

“It is well established that, in order to constitute an act of bankruptcy within the meaning of the definition just [60] quoted, a lien must be created. A judgment alone, which does not carry with it a lien, is not sufficient. In other words, a petition for an adjudication which relies upon this provision of the law must, in order to avoid being jurisdictionally defective, allege that a lien has been created * * *”

Then they cite every case I have referred to: *Elkay Reflector Corporation v. Savory*, *In re Hollywood Land and Water Company*, *Weitzel Flooring Corporation v. Getz*; also *In re Summit*, and so forth.

“The petition in the present case contains no allegation that any lien was created. Nor could such have been the case, because in Maryland judgments create liens only on real property and leasehold interests * * * There is no claim that Day owned such property at the time the judgment of September 12th was obtained, or, in fact, at any other time.

No such property is listed by him in the schedules which were filed by him subsequently, with his voluntary petition.

“Because of this clear failure to disclose in the petition the commission of any act of bankruptcy, the petition is jurisdictionally defective * * *”

In other words, they held that the allegations would have to show that a judgment was obtained and that the judgment created a lien upon property which he then owned; that in the absence of that, it was not sufficient. In other words, we have the reverse of the situation. [61]

A still later case is from the same District, *In re Mayhew*, 31 Fed. Supp. 175, by a Judge who is better known to us: Judge Chesnut. There is not a “t” in his name. He will kill you if you put a “t” in that. That is a famous name in Massachusetts. It is spelled C-h-e-s-n-u-t.

Judge Chesnut, I think, is the senior District Judge of the District of Maryland. I know his name has appeared in the records for many, many years. He is considered a very learned Judge. Referring to the question whether a confession of judgment constituted an act of bankruptcy, he says:

“It is argued that a voluntary confession of judgment by a debtor, or active aid to a creditor in obtaining judgment, which constitutes a lien on his property, in favor of one creditor in preference to others, will constitute a transfer. A number of decisions so hold (citing *In re Truitt* and *In re Irish*). But a judgment itself whether confessed or ob-

tained by default is not an act of bankruptcy unless it constitutes a lien on the debtor's property (citing again the Weitzel case and citing his colleague's opinion *In re Day and Gilbert's Collier on Bankruptcy*, Section 159). The judgment relied on in this case did not create the lien, which had arisen by the attachments levied more than four months prior to the bankruptcy petition. The judgment was no more than a step in the proceeding to enable the creditor to enforce the lien previously obtained. The preference [62] thereby obtained would not be assailable in bankruptcy. See *Elkay Reflector Corporation v. Savory, Inc.*, *supra*, and cases therein cited * * *

So we have to use the trite phrase "an unbroken line of decisions over a period of at least twenty years." I think it may be thirty years.

Mr. Casey: I might give you the citation, your Honor, in that Eustace case in which I think Judge McCormick did write an opinion. It is in 14 American Bankruptcy Reports, New Series, page 675. As I recall it, it is about 12 or 14 years ago. I think it does cite the Getz case.

The Court: We have the highest regard for the senior Judge of this District and his learning. I would be very much impressed by his reasoning.

Mr. Casey: I think that was based on the Getz case which came out about that same time.

Mr. Turnbull: May I suggest once more, your Honor, something?

The Court: Yes.

Mr. Turnbull: There are no cases that assert that a judgment which does not create a lien on personal property is an exhaustion to the remedy to such extent that no act of bankruptcy exists.

The Court: The main purport of those cases is: if he has acquired any lien on any property, you see.

Mr. Turnbull: Then the balance of Section Three doesn't [63] mean anything at all, not having removed the lien within five days?

The Court: Well, that is what they say. However, I am not basing it on that. I think that is clearly decided in the cases, that the 5-day period is not an addition to the 30-day period. It is within the 30-day period. I am inclined to the view that the creation of the lien starts the running of your period, of your four-months' period; that suffering it constitutes an act of bankruptcy.

Mr. Turnbull: That's right, your Honor. But nobody had a lien on the personal property until——

The Court: Well, that would not be the effect because otherwise, as I say, the period would never run because at any time, 10 years afterwards, if you could find property you could levy an execution. You could start the running of the period again.

Mr. Turnbull: That right's, your Honor, because you have not yet taken the property away from the assets of the bankrupt to the detriment of the other creditors.

The Court: No. Your judgment created your lien on your real property.

Mr. Turnbull: But not a personal lien.

The Court: It doesn't make any difference.

Mr. Turnbull: We have the law before us now in the New Mexico case. We now have the law of New Mexico before your Honor that says it creates a lien on real property, not on [64] personal property.

The Court: There was property to which the lien of the judgment attaches.

Mr. Turnbull: Let us assume that there was real property; there was still no lien on the personal property. Nobody was taking Mrs. Dysart's property away from her until the 7th of July. No other creditor could complain about it because they weren't taking it away from them.

Mr. Casey: You take it away when you get a judgment lien.

Mr. Turnbull: You don't take personal property away just because you get a judgment. Your Honor, counsel knows better than that.

The Court: Well, gentlemen, this Eustace matter is a referee's opinion.

Mr. Casey: I beg your pardon. That's right. That was affirmed by——

The Court: Referee Moss as Special Master.

Mr. Casey: I think probably the result is in the Getz case.

The Court: It is true that he bases it on the Getz case.

Mr. Casey: Yes. I had forgotten that case was reviewed, and perhaps Judge McCormick didn't write the opinion but just affirmed the review.

The Court: Well, I don't think this opinion helps anything one way or the other. Incidentally, in discussing this [65] section, Mr. Remington, whom I cited at the beginning, points to the fact that while many of these cases arose under the sections before the recent amendments, he says that the elements of the fourth act under discussion here are the elements of the third act of bankruptcy under the amendatory act of 1938. So the decisions which interpreted the paragraphs are authority for the same proposition.

It seems to me, gentlemen, that any other interpretation would be very, very dangerous. We have to consider two things. We have to consider the aim of the bankruptcy law to allow honorable relief from one's debts as contradistinguished from the old problem, which especially obtained on the Continent, where any bankruptcy was considered fraudulent; that bearing in mind that where acts of bankruptcy are clearly defined, we should give effect to them; but where the section is relied upon to force into bankruptcy a person who denies that he is guilty of an act of bankruptcy, that we should require a strict compliance with the provisions which define what is an act of bankruptcy which may cause creditors in certain numbers to come into court.

As a Judge of this court we can see quite often unfairness resulting from involuntary petitions.

You gentlemen were not connected with the petition, but recently I had a case before me of a

partner—I don't remember, but perhaps one of you was in the case; I don't try to remember who attorneys are—but we had a case where [66] a partner some eight months ago came into court and endeavored to force the partnership into bankruptcy. He secured the appointment of a receiver and long after came into court; and he was unable to prove that the assets of the partnership at the fair valuation were insufficient to pay the debts; in other words, the statutory definition of "bankruptcy."

The attorney complained and said, "Why, it's eight months ago. I can't prove market value."

He tried to put on one of these referee's appraisers who went by the inventory. I said, "That is not the way of proving value under the law of California. And if it is to your disadvantage, you blame it on the file. Furthermore, when you filed that petition, your petitioner swore that the partnership was insolvent. You should be in a position to prove it."

So I think that I am not interpreting the law strictly but I merely hold that the statute, as it reads to me, could certainly be fraught with grave danger if every time during the life of a judgment, that a creditor might obtain a lien upon any of the debtor's property; that unless the debtor who may have been relieved of the effect of the judgment through the running of the statute of limitations satisfied it within the statutory period, he is guilty of an act of bankruptcy against his will. You

can bring him to where, against his will, you can have him in court and compel him [67] to surrender his property for the adjudication of the court.

The cases clearly intimate the contrary, and certainly the Getz case, which seems to have had the approval of all the other courts, clearly states that if property exists in the hands of the debtor at the time a judgment is entered, then regardless of whether the lien is actually followed up later on after the judgment, the date of the lien controls. I think the very wording of the section is that a lien upon any property of the debtor is proof that the Congress intended that the automatic lien, which most statutes create in favor of the judgment creditor, should be the starting point of the period which we find in subsection 3 of Section Three of the Bankruptcy Act of 1938.

I shall, therefore, sustain the objection to the introduction of Petitioner's Exhibit 1 for identification upon the ground that in the light of the stipulations of fact before the court it is evident that the lien of the judgment had attached long before the expiration of the statutory period and that no new liens created subsequently by periodic attachments served to extend the period so as to make the acts which occurred in 1941, years after the original judgment, acts of bankruptcy.

Now, gentlemen, that disposes of No. 1.

Mr. Turnbull: I think we can conclude the matter very quickly. My offer of the Youngblood, case, your Honor, was admitted for a special purpose. That was marked as an exhibit? [68]

The Clerk: That is Exhibit 1 for identification.

Mr. Turnbull: I would like to offer that in evidence now.

Mr. Casey: We will object to it as irrelevant, incompetent and immaterial, as the judgment therein referred to is the judgment foreclosing the mechanic's lien which is not, of course, an act of bankruptcy; and it is a secured line which, of course, cannot be counted insofar as the unsecured creditors and does not prove or tend to prove any of the issues in this case, except for the sole purpose, as he heretofore stipulated, that it was property owned by the debtor in McKinley County in 1937.

The Court: All right. Mr. Turnbull?

Mr. Turnbull: I will take your Honor's ruling on that, and then I think I can dispose of the whole matter.

The Court: I will sustain the objection, except insofar as the documents referred to are material to prove that at the time of the entry of the judgments in the State of New Mexico the respondent owned certain pieces of real property to which, under the law of New Mexico, as stipulated by counsel, the lien of the judgment will attach.

Mr. Turnbull: And which judgment do you refer to? This Christensen judgment?

The Court: The Christensen judgment, yes.

Mr. Turnbull: If your Honor please, the petitioning creditors at this time declare that the facts relative to the [69] existence of a lien, which is

apart from the question of insolvency, are all embodied in the petitioning creditors' and intervening creditors' Exhibit No. 1, which your Honor has ruled out. It seems, therefore, it should be unnecessary for us to proceed for several days to prove the other issues in the case and then at the end of that time have your Honor rule as you have ruled now that the essential act of bankruptcy has not been proven.

May I suggest, your Honor, therefore, after making that declaration on behalf of the petitioners and the interveners, under your Honor's ruling, the case might be disposed of rather than to compel us to proceed, because otherwise the proceeding is a vain attempt. In other words, your Honor controls the proof of the case. I don't think that we ought to be required to go ahead and now prove these 52 people are creditors because if we got through and your Honor held they weren't creditors——

The Court: The only thing you can do is rest. I am satisfied with this ruling.

Mr. Turnbull: And we are dissatisfied with it.

The Court: I know. I am satisfied with the ruling, but at the same time I don't want to catch you on the alternative dilemma where they will come back and say—you know how they start—"We think the learned trial Judge was wrong."

Mr. Casey: I have a thought that might expedite this. [70] Mr. Turnbull might make an offer of proof.

Mr. Turnbull: Then you will resist it, and we will have to prove it anyway.

Mr. Casey: No. You rest when I resist.

Mr. Turnbull: All right. I think we can do it that way, your Honor.

The Court: If you are satisfied that insolvency exists, as shown by this exhibit, then if you rest without further proof, he can just rest.

Mr. Turnbull: At this time, and in view of the court's ruling that the facts which we have offered in support of one element of our act of bankruptcy would be insufficient, notwithstanding that we should proceed for several days to prove that each and every one of the 52 petitioning and intervening creditors are creditors, and that we should prevail after several days to show that the alleged bankrupt was insolvent, even in that event we would have to have the present ruling of the court against us.

At this time we offer to prove, in lieu of taking up four or five days of the court, the following:

That each and every one of the petitioning creditors, each and every one of the first intervening petitioning creditors, and each and every one of the second intervening petitioning creditors were at the time of the filing of the respective petitions creditors, having provable unsecured claims against the alleged bankrupt, Stella Dysart. [71]

We offer further to prove that at the time of the filing of the original creditors' petition and for all of the four months immediately preceding

thereto, Stella Dysart was insolvent within the meaning of the Bankruptcy Act.

We offer to prove that within the four months and all thereof immediately preceding the first intervening creditors' petition and at the time thereof Stella Dysart was insolvent.

We offer to prove that at the time of the filing of the second intervening creditors' petition and for all the four months immediately preceding thereto Stella Dysart was insolvent.

We offer to prove that none of the debts due the original creditors, petitioning creditors, the first intervening petitioning creditors and the second intervening petitioning creditors have been paid and that all of said sums are due and were at the time of their filing petitions past due and wholly unpaid.

Mr. Casey: Which offer we resist on the ground that the proof, if produced, is irrelevant, incompetent and immaterial in view of the fact that they have no act of bankruptcy and cannot prove one; on the further ground that we do not owe, and we stand prepared to prove we do not owe, any of the petitioning creditors in amounts up to \$500; upon the further ground we are prepared to prove that at all the times mentioned in said petition and at the present time the respondent was and now is solvent. [72]

Mr. Turnbull: We also offer to prove that by the proof heretofore offered in the foregoing avow that the aggregate of the debts due and owing from

Stella Dysart to the respective petitioners, original petitioners, was in excess of \$500; that at the time of the filing of the original petition she owed debts in excess of \$1,000; that the same condition existed at the time of the filing of the first intervening creditors' petition; the same condition existed at the time of the filing of the second intervening creditors' petition.

Mr. Casey: Which offer of proof we resist upon the grounds heretofore stated.

Mr. Turnbull: I think the other matters are admitted in the answer.

The Court: Well, ordinarily, gentlemen, I would not accept this suggestion to short-cut because I would insist that counsel proceed to create a *prima facie* case. Unfortunately the legal question was raised right at the beginning, and it is not my custom to reserve ruling, which I might have done and allowed the testimony as to all matters to proceed and then acted on a motion to dismiss.

I agree with Mr. Turnbull that it would be an idle act and the consumption unnecessarily of judicial time, which is needed elsewhere, to proceed to determine the question of solvency when, even if the court found insolvency to exist under the ruling of the court, the other two elements of the [73] act necessary under subdivision 3 of Section Three could not possibly be proved because I have held that they are not present.

So that in view of the fact that these cases say you have to prove three things: Insolvency, the

existence of a lien, the failure to discharge a lien, I have held that the facts upon which they rely to prove the existence of a lien and failure to discharge do not amount to that in law.

Therefore, two of the elements necessary to prove bankruptcy under this subdivision could never be proved under my ruling.

Mr. Turnbull: I may say, your Honor, I had the same situation practically before another department of this court the other day where petitioning creditors claimed it would take five days to prove their case, and we had a situation very much like this. The court approved that form of procedure.

The Court: Well, I am willing to do that in this particular case because I think we will be avoiding an idle act.

Mr. Turnbull: I have no trick in offering that.

The Court: It is well to say that we ought to determine matters on the merits, but when the legal question is raised which absolutely precludes any settlement on the merits, assuming that the Judge is correct, it is a waste of time to insist on going through the formality, knowing that it would [74] have to end in a dismissal at the end of the petitioners' case, because let us assume that the evidence on the part of the petitioner should be in and respondent should simply decline to offer any evidence upon the ground that, assuming insolvency, the other two elements have not been proved, I would have to grant a motion to dismiss.

Mr. Turnbull: Your Honor rules, then, on that motion adversely. Then I will rest, and that will terminate the proceeding.

The Court: Well, I feel that under the ruling of the court it would be idle to proceed to prove the other elements alleged in the various petitions because even if the elements which Mr. Turnbull has offered to prove were proved, I would still have to dismiss the petition in view of the principle I have declared in sustaining the objection to Petitioner's Exhibit 1. Therefore, the objection to the offer of proof will be sustained.

Mr. Turnbull: May I ask, for the record, do you resist the second portion of the avowal?

Mr. Casey: Yes.

Mr. Turnbull: And both offers of proof are denied?

The Court: Both offers are denied.

Mr. Turnbull: At this time the petitioning creditors and intervening creditors and each of them rest.

Mr. Casey: And the respondent moves for a dismissal.

The Court: Upon the grounds I have already stated, the petition will be dismissed.

[Endorsed]: Filed Jan. 14, 1943. [75]

[Endorsed]: No. 10339. United States Circuit Court of Appeals for the Ninth Circuit. Hugo Von Segerlund, Alice Von Segerlund, Florence Kee Brown, John A. Frear, John S. Cross, Valeria C. Painter, William Pietsch, D. F. Hanley, Bertha Nelson, Alma C. Swenson, Frederick R. Cook, Josephine Kaiser, Beatrice Rummelle, John J. McFarlane, Ada S. Mackey, James P. Mackey, Jr., Amy Simpson, Adelaide G. Sturgis, Margaret Bell Fitzpatrick, Mabel P. Travis, Eliza J. Fulton, Margaret Minnick, Nellie Nelson Lee, Ida Swenson, Bertha Kenniston, S. H. Kenniston, Caroline A. Wilde, Mrs. August Dresch, Henry A. Kulha, Leonia E. Kulha, Albert G. Loelike, Reinholdt A. Wolter, Adeline B. Wolter, Silas Whitcomb, W. H. Borton, Henrietta Bernitt, Virginia Magale Coshott, Josie C. Ide, by W. H. Borton, her attorney in fact, and Ambrosia Investors' Company, Inc., a corporation, Appellants, vs. Stella Dysart, individually and Stella Dysart, also doing business as the Ambrosia Club and the Mutual Land Owners, Limited, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed: January 7, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

In Bankruptcy
No. 10339

In the Matter of

STELLA DYSART, Individually, and STELLA
DYSART, also doing business as the Ambrosia
Club and the Mutual Land Owners Limited,
Bankrupt.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

Come Now the petitioning creditors and the intervening petitioning creditors herein, and each of them, the appellants herein, and hereby submit a concise statement of points on which the appellants and each of them intend to rely on the appeal of the above entitled proceeding, as follows:

I.

That the above entitled District Court erred in dismissing the bankruptcy proceedings and in refusing to permit the petitioning creditors and the intervening creditors to prove the allegations of their respective petitions, to-wit: the Creditors' Petition, the First Intervening Creditors' Petition, and the Second Intervening Creditors' Petition, and each of them.

II.

That the above entitled District Court erred in making its order of November 7th, 1942, dismissing

the said bankruptcy petitions of the original and intervening creditors, the appellants herein.

III.

That the above entitled District Court erred in refusing to permit the appellants, both the original petitioning creditors and the intervening petitioning creditors, to prove by legal evidence the allegations of their respective petitions, particularly in this: in refusing to accept in evidence that certain authenticated copy of the Judgment, the Execution, the Sheriff's Notice of Levy of Execution, the Sheriff's Return of Sale, and the Court's Order approving the Sheriff's sale as made by the officials of the County of McKinley, State of New Mexico, in that action entitled "Mary Christensen, Plaintiff, vs. Stella Dysart, Defendant"; and in denying the petitioners the right to have in evidence the authenticated copies of the Judgment, Execution, Sheriff's Return of Sale and the Court's Order approving the Sheriff's sale, in those certain proceedings had in the First Judicial District Court of McKinley County, State of New Mexico, entitled "E. H. Youngblood, Plaintiff, vs. Stella Dysart, Defendant", said authenticated copy being duly certified to by the Clerk of the said Court, and by the Judge of said Court; and in refusing to permit the petitioning creditors and the intervening petitioning creditors to prove the allegations of their respective petitions, to-wit, in refusing to permit the appellants to prove that Stella Dysart was insol-

vent at the times alleged in the respective petitions of said creditors, and in refusing to petitioning creditors and intervening petitioning creditors the right to prove that they were creditors, that they had legal, provable claims against Stella Dysart, unsecured, in amounts aggregating in excess of the statutory required Five Hundred (\$500.00) Dollars, and that said Stella Dysart, the bankrupt, owed debts in excess of One Thousand (\$1000.00) Dollars; in refusing to permit the appellants to prove that Stella Dysart was insolvent, and in refusing to permit appellants to prove that Stella Dysart committed the acts of bankruptcy alleged by the respective petitioning creditors and the intervening petitioning creditors in their respective petitions.

IV.

That the above entitled Court erred in concluding as a matter of law that Stella Dysart had not committed an act of bankruptcy when it appeared from the final judgment and records of the First Judicial District of McKinley County, State of New Mexico, that Stella Dysart had, while insolvent, permitted certain creditors to obtain a lien, to wit, had permitted Mary Christensen to levy upon personal property of Stella Dysart by means of a writ of execution, had permitted the Sheriff of McKinley County, to set for sale and to sell and dispose of personal property of Stella Dysart, the said Stella Dysart not having within five days or at all to cause said levy of writ of execution to be vacated or set aside, having permitted a final dis-

position to be made by execution sale of the said personal property of said Stella Dysart in McKinley County, State of New Mexico, within four months immediately preceding the filing of the petition of the petitioning creditors and the intervening petitioning creditors herein, the said Stella Dysart being insolvent at all of said times.

Dated at Los Angeles, California November 19, 1942.

RUPERT B. TURNBULL and
L. H. PHILLIPS
By L. H. PHILLIPS
Attorneys for Petitioning
Creditors and Intervening
Creditors.

[Endorsed]: Filed Jan. 7, 1943, Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED

To Paul P. O'Brien, Clerk of the above named
Court:

The petitioning creditors and intervening petitioning creditors herein hereby designate the portions of the record, proceedings and pleadings in the above entitled cause to be contained in the record on appeal and to be printed as follows:

(1) Creditors' Petition. (Omit titles of Court and Cause).

(2) Intervening Creditors' Petition. (Omit titles).

(3) Second Intervening Creditors' Petition. (Omit titles).

(4) Bill of Particulars. (Omit titles).

(5) Authenticated copy of the record in "Mary T. Christensen, Plaintiff, vs. Stella Dysart, Defendant", as made by the Clerk and Judge of McKinley County, State of New Mexico, Action No. 5134, designated in the record as "Petitioning Creditors Exhibit No. 1 for Identification."

(6) Authenticated copy of the record in the case of "E. H. Youngblood, Plaintiff, vs. Stella Dysart, Defendant," Action No. 5414, First Judicial District Court, County of McKinley, State of New Mexico, as made by the Clerk and the Judge of said Court, designated in the evidence in this case as "Petitioning Creditors Exhibit No. 2 for Identification."

In printing the Exhibits please print Petitioning Creditors Exhibits Nos 1 and 2 verbatim.

7. Notice of appeal and record of service thereon. (Omit titles).

8. Statements of Points on which Appellants intend to rely. (Omit titles).

9. This designation of contents of record on appeal. (Omit titles).

10. Findings, Conclusions and Judgment of Dismissal. (Omit titles).

11. Cost Bond on Appeal. (Omit titles).
12. Order Extending Time Within which Appellant may file record on appeal.

RUPERT B. TURNBULL and
L. H. PHILLIPS

By L. H. PHILLIPS

Attorneys for Petitioning
Creditors and Intervening
Creditors.

[Endorsed]: Filed Jan. 7, 1943, Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

REQUEST AND DESIGNATION BY APPEL-
LEE FOR ADDITIONAL CONTENTS OF
RECORD ON APPEAL

Stella Dysart, the respondent in the above entitled matter, herewith files this her request and demand and designation for contents of the record to be used on appeal herein by the Appellants, and herewith designates as necessary and proper for the contents for said record on appeal, the following documents and data, in addition to the designation for such record on appeal as filed by Appellants herein, and herewith respectfully requests and demands that the following documents be included, together with these designated by the Appellant as part of the records on appeal here,

1. Answer of Stella Dysart to the original Involuntary Petition by six creditors.

2. Answer of Stella Dysart dated July 16, 1942 to the Petition of Creditors to Intervention and Supplemental Involuntary Petition by Creditors by William Pietsch, et al.

3. Answer of Stella Dysart dated July 16, 1942 to the petition to intervene and Supplemental Involuntary Petition by Creditors by W. H. Brown, et al.

4. Stenographic Report of Proceedings had at the trial of the above entitled action by the Honorable Leon Yankwich of November 4, 1942.

5. This Designation of Record on Appeal by the Appellee herein.

HIRAM E. CASEY

S. BERNARD WAGER

By HIRAM E. CASEY

Attorneys for Appellee

Stella Dysart

Receipt of copy of within Designation admitted this 29th day of Jan. 1943.

RUPERT B. TURNBULL and

L. H. PHILLIPS

By L. H. PHILLIPS

A.G.C.

Attorneys for Appellants

[Endorsed]: Filed Feb. 1st, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S OBJECTION TO PRINTING
OF ENTIRE STENOGRAPHIC REPORT

Comes now the appellant and objects to appellee's designation for additional contents to be printed in the record, namely: item 4, "Stenographic Report of the proceedings had at the trial of the above entitled action before Hon. Leon Yankwich on November 4, 1942," on the ground and for the reason that said Stenographic Report as designated by appellee contains statements made only by the Court and Counsel and does not contain any evidence material to the issue on the appeal herein.

Dated this 18th day of January, 1943.

RUPERT B. TURNBULL and
L. H. PHILLIPS

By L. H. PHILLIPS

Attorneys for Appellants.

Received copy of the within objections this 19 day of January, 1943.

HIRAM E. CASEY and
S. BERNARD WAGER,

By S. BERNARD WAGER

Attorneys for Appellee.

[Endorsed]: Filed Jan. 20, 1943. Paul P. O'Brien, Clerk.